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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. — 71-881

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

HOWARD C. HUDSON;

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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HOWARD C. HUDSON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner respectfully requests that a Writ of Certiorari issue to review the judgment of the Supreme Court of Illinois entered in this cause on November 30, 1971.

OPINIONS BELOW

The opinion of the Supreme Court of Illinois is as yet unreported and is printed as Appendix A. The opinion of the Appellate Court of Illinois is reported at —— Ill. App. 2d ——, 266 N.E. 2d 481 (1970). and is printed as Appendix B. The opinion of the Supreme Court of Illi-

pois in *People v. Kaiden*, — Ill. 2d —, Docket No. 42674, October 13, 1971, is as yet unreported and is printed as Appendix C.

JURISDICTION

The judgment of the Supreme Court of Illinois was entered on November 9, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3).

QUESTION PRESENTED

Does the Equal Protection Clause of the Fourteenth Amendment require that prohibitions on possession and sale of drugs be based solely on current scientific evaluations of the relative effects of such drugs?

CONSTITUTIONAL PROVISIONS

United States Constitution

Fourteenth Amendment:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

1970 Illinois Constitution (Effective July 1, 1971)

Article I, Section 2:

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

1870 Illinois Constitution

Article II, Section 2:

No person shall be deprived of life, liberty or property without due process of law.

1870 Illinois Constitution

Article IV, Section 22

The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: for—

Granting divorces;

Changing the names of persons or places;

Laying out, opening, altering and working roads or highways;

Vacating roads, town plats, streets, alleys and public grounds;

Locating or changing county seats;

Regulating county and township affairs;

Regulating the practice in courts of justice;

Regulating the jurisdiction and duties of justices of the peace, police magistrates and constables;

Providing for changes of venue in civil and criminal cases;

Incorporating cities, towns or villages, or changing or amending the charter of any town, city or village;

Providing for the election of members of the board of supervisors in townships, incorported towns or cities;

Summoning and impaneling grand or petit juries;

Providing for the management of common schools;

Regulating the rate of interest on money;

The opening and conducting of any election, or designating the place of voting;

The sale or mortgage of real estate belonging to minors or others under disability;

The protection of game or fish;

Chartering or licensing ferries or toll bridges;

Remitting fines, penalties or forfeitures;

Creating, increasing or decreasing fees, percentage or allowances of public officers, during the term for which said officers are elected or appointed;

Changing the law of descent;

Granting to any corporation, association or individual the right to lay down railroad tracks, or amending existing charters for such purpose;

Granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever.

In all other cases where a general law can be made applicable, no special law shall be enacted.

STATUTORY PROVISIONS

Illinois Revised Statutes

Chapter 38, Section 22-2-17 Uniform Narcotic Drug Act.

"Narcotic Drugs" means any of the following: . . .

(3) "Cannabis" includes all parts of the plant Cannabis Sativa L. (commonly known as marihuana), whether growing or not; the seeds thereof, the resin extracted from any part of such plant;

and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other cannabinol derivatives, whether produced directly or indirectly by extraction, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom) fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

Chapter 111½, Section 801

Drug Abuse Control Act.

. . . (f) "Depressant or stimulant drug" means:

(1) Any drug which contains any quantity of (A) barbituric acid or any of the salts of barbituric acid; or (B) any derivative of barbituric acid which has been designated by lawful regulation of the Superintendent or Attorney General as habit forming.

(2) Any drug which contains any quantity of (A) amphetamine or any of its optical isomers; (B) Any salt of amphetamine or any salt of an optical isomer of amphetamine; (C) any substance containing any substituted amphetamine, including but not limited to 4-methyl; 2; 5-dimethoxy amphetamine (DOM, STP), alpha-methyl 3, 4-methylene dioxy phenethylamine (MDA); or (D) any substance designated by lawful regulations of the Superintendent or Attorney General as habit-forming because of its stimulant effect on the central nervous system; or

(3) Any drug which contains any quantity of alkyl substituted Tryptamine, including diethyltryptamine (DET), dimethyltryptamine (DMT), and dipropyltryptamine (DPT), lysergic acid, psilocybin (psilocibin), psilocyn (silocin), benactyzine (including DMZ) phenylcyclohexylpiperidine (PCOP), piperidylbenzilate (including JB compound), and every other compound, salt, derivative, decomposition product, mixture of preparations of the chemicals enumerated in this paragraph.

(4) Any drug which contains any quantity of a substance designated by lawful regulations of the Superintendent or Attorney General as having a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

STATEMENT OF THE CASE

The defendant, Howard C. Hudson, was indicted for the sale of a narcotic drug (marijuana) in violation of Ill. Rev. Stat., ch. 38, sec. 22-3. After a trial by jury, he was found guilty and was sentenced to the Illinois State Penitentiary for not less than ten or more than fourteen years.

Defendant thereafter appealed to the Illinois Appellate Court, which affirmed his conviction. Defendant then pursued a further appeal in the Supreme Court of Illinois, raising for the first time the constitutionality of the Uniform Narcotic Drug Act. The State Supreme Court passed upon this issue, striking down the marijuana provision of the Drug Act on the ground that those provisions deprived defendant of equal protection of the law.

REASONS FOR GRANTING THE WRIT

I.

THIS COURT HAS JURISDICTION OF THE MATTER AS A RESULT OF THE ILLINOIS SUPREME COURT'S RELIANCE UPON THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

A.

The Fourteenth Amendment was the Sole Ground for Striking Down the Statute.

On November 30, 1971, the Illinois Supreme Court in *People* v. *Hudson*, —— Ill. 2d —— (Docket No. 43994), reversed outright defendant's conviction for the unlawful sale of marijuana (Ill. Rev. Stat. 1963, Ch. 38, sec. 22-3). For reversal, the Court referred to its decision in *People* v. *McCabe*, —— Ill. 2d —— (Docket No. 42674, October 15, 1971), a 4 to 2 decision with Justice Schaefer abstaining, holding that the classification of marijuana in the Narcotic Drug Act (Ill. Rev. Stat. 1969, Ch. 38, par. 22-1 *et seq.*) under which defendant was convicted, is "arbitrary and deprives the defendant of equal protection of the law." The *McCabe* decision reflected a bare majority of the Illinois Supreme Court Justices.

The threshold question is whether this Court has jurisdiction. The decision of the Illinois Supreme Court was based exclusively on the court's interpretation of the equal protection clause of the Fourteenth Amendment of the United States Constitution. This conclusion is supported by two facts. First, the *Hudson* decision unequivocally states:

> "It is necessary to consider only one of defendant's several contentions: that the legislative classification of marijuana as a 'narcotic drug' with its attendant sentencing provisions deprived the defendant of due process and equal protection of the law and constituted cruel and unusual punishment."

Defendant, in his brief, only cited the Fourteenth Amendment of the United States Constitution for the proposition that he was deprived of due process of law and equal protection of the law. The defendant also cited the Eighth Amendment of the United States Constitution for the proposition that he had been subjected to cruel and unusual punishment. He further cited Article II, Section 11 of the Illinois Constitution which provides that "All penalties shall be proportioned to the nature of the offense . . .". The Court obviously did not consider the Illinois Constitution since it only made reference to defendant's claim that his sentence "constituted cruel and unusual punishment." What is left, then, are three federal constitutional arguments which the Illinois Supreme Court, in its own words, felt "necessary to consider only."

Second, the actual ground of disposition in the *Hudson* case was defendant's equal protection argument. That is, the classification of marijuana in the Narcotic Drug Act, under which defendant was convicted, was arbitrary and denied defendant equal protection of the law. In his brief, defendant expressly argued:

> "The gross disparity in the treatment of marijuana law violators amounts to an unscientific classification in violation of the equal protection clause of the Fourteenth Amendment." (Def. Br., p. 13).

The only ground for reversal in the instant case was the Equal Protection Clause of the Fourteenth Amendment.

It was the only constitutional provision presented to the court on equal protection. No equivalent Illinois constitutional provision was relied upon by the defendant. Nor did the Illinois Supreme Court rely upon any State Constitutional Provision. Indeed, they could not for there was none. The 1870 Illinois Constitution contains no equal protection clause. The Supreme Court of the United States has jurisdiction under such circumstances. *Neilson* v. *Lagow*, 53 U. S. (12 How.) 98, 110 (1851); *Konigsberg* v. *State Bar of California*, 353 U. S. 252 (1957).

B.

Assuming the Presence of a Non-Federal Ground, Such Ground Was Totally Inadequate.

The only case cited by the Illinois Supreme Court in disposing of the instant case was *People* v. *McCabe*, —— Ill. 2d —— (Docket 42674, October 15, 1971). In *McCabe*, the Illinois Supreme Court held that the classification of marijuana in the Narcotic Drug Act was an unconstitutional denial of equal protection. Specifically, the Court held:

> "The absence of a rational basis for distinguishing first convictions for sales of marijuana from first convictions for sales of drugs placed in the Drug Abuse Control Act compels the conclusion that the present clasification of marijuana offends the equal-protection clause of the United States constitution and our new constitution of Illinois and was in violation of section 22 of article IV. of the former constitution of this State."

From the above, it appears that three bases were relied upon by the Court: one federal ground and two non-federal grounds.

Whether an adequate non-federal ground exists is itself a federal question. *Abie State Bank* v. *Weaver*, 282 U.S. 765 (1931). A State court may not avoid deciding federal questions and defeat the jurisdiction of this Court by putting forth non-federal grounds of decision which are without any fair or substantial support. *Wolfe* v. *State of North Carolina*, 364 U. S. 177 (1960). We must therefore examine the non-federal grounds relied upon by the Illinois Supreme Court.

Defendant in *McCabe* was indicted on February 3, 1969 for unlawful sale of narcotics on December 4, 1968. He was tried and sentenced in May, 1969. Similarly, defendant Hudson was charged with having unlawfully sold narcotic drugs in October, 1966, and was found guilty on October 2, 1967. The new Illinois Constitution became effective on July 1, 1971 and contains the following provision:

> "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws. (Article I, sec. 2).

This was the first equal protection clause in Illinois history and it was not in effect at the time either defendant was convicted. Both defendants challenged their convictions as being based upon an unconstitutional statute. The Illinois Supreme Court stated the issue as follows:

> "The equal-protection argument which is raised is narrow and limited. It simply is that the present placing or classifying of marijuana under the Narcotic Drug Act rather than classifying it under the Drug Abuse Control Act (Ill. Rev. Stat. 1969, Ch. 11½, par. 801 *et seq.*) with the 'stimulant or depressant' drugs is constitutionally invalid as an improper classification considering the present state of knowledge concerning the comparative natures and effects of the drugs named in two statutes."

This "equal-protection argument" could not be based on the Illinois Constitution since there was no provision in existence at the time. In *New York ex rel. Bryant* v. *Zimmerman et al.*, 278 U. S. 63 (1928) this Court held that "the absence from the state constitution of an equal protection of the laws clause" made "it apparent that the claim of invalidity by reason of the statute's repugnance to the Fourteenth Amendment was presented." In the *Zimmerman* case, the petition for habeas corpus, while asserting that the state statute was "unconstitutional", contained no mention of any state or federal constitutional provision. The court of first instance was similarly indefinite. The Appellate Division stated that the claim of invalidity was grounded on asserted repugnance to both the due process clause of the state constitution, and the privileges and immunities, due process of law and equal protection clauses of the Fourteenth Amendment. The New York Court of Appeals accepted a further appeal and ruled upon the constitutionality of the statute including a reference to equal protection of the laws but made no specific reference to any state or federal constitutional provision. Among the cases cited by the Court of Appeals was a decision of this Court dealing expressly with the equal protection guarantee. It was from this showing in the record, coupled with the absence from the state constitution of an equal protection clause, that led this Court to hold that a federal question had been presented.

There having been no state equal protection clause, it can be said that the disposition of the case must rest upon the federal equal protection clause.

The Illinois Supreme Court's reliance upon Article IV., Section 22 of the Illinois Constitution is equally untenable. The aforementioned section states as follows:

The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: for —

Granting divorces;

Changing the names of persons or places;

Laying out, opening, altering and working roads or highways;

Vacating roads, town plats, streets, alleys and public grounds;

Locating or changing county seats;

Regulating county and township affairs;

Regulating the practice in courts of justice;

Regulating the jurisdictions and duties of justices of the peace, police magistrates and constables;

Providing for changes of venue in civil and criminal cases;

Incorporating cities, towns or villages, or changing or amending the charter of any town, city or village; Providing for the election of members of the board of supervisors in townships, incorporated towns or cities;

Summoning and impaneling grand or petit juries;

Providing for the management of common schools;

Regulating the rate of interest on money;

The opening and conducting of any election, or designating the place of voting;

The sale or mortgage of real estate belonging to minors or others under disability;

The protection of game or fish;

Chartering or licensing ferries or toll bridges;

Remitting fines, penalties or forfeitures;

Creating, increasing or decreasing fees, percentage or allowanees of public officers, during the term for which said officers are elected or appointed;

Changing the law of descent;

Granting to any corporation, association, or individual any special or exclusive privilege, immunity or franchise whatever.

In all other cases where a general law can be made applicable, no special law shall be enacted."

Nowhere in this section of the constitution is the expression "equal protection" or words synonymous thereto. In a criminal case, *People v. Borgeson*, 335 Ill. 136 (1929), the Illinois Supreme Court interpreted this clause in rejecting a challenge to a criminal statute:

> "*Acts concerning crimes* or concerning deadly weapons *are not among the cases enumerated in section 22 of article 4 of the constitution,* in which the passage of local or special laws is prohibited. The latter clause of section 22 is addressed to the legislature, and the determination by the General Assembly that a general law cannot be made applicable to a situation is not open for judicial review. (*Citations.*)
>
> The act of 1925 is neither a local nor a special law. Special laws are those made for individual cases, or for less than a class requiring laws appropriate to its peculiar conditions and circumstances. Local laws are special as to place. The object of the prohibition of special or local laws is to prevent a diversity of laws relating to the same subject. (*Citations.*) A law is not local or special in a constitutional sense if it operates in the same manner upon all persons in like circumstances. (*Citation.*) General laws are those which relate to or bind all within the jurisdiction of the law-making power. If a law is general and uniform in its operation upon all persons in like circumstances it is general in a constitutional sense, but it must operate equally and uniformly upon all brought within the relation and circumstances for which it provides." (*Citation.*) [Emphasis Supplied.]

II.

THE ILLINOIS SUPREME COURT IMPROPERLY STRUCK DOWN THE STATE LEGISLATURE'S CLASSIFICATION OF MARIJUANA AS A NARCOTIC DRUG ON THE GROUND THAT THE FEDERAL EQUAL PROTECTION CLAUSE REQUIRED SCIENTIFIC CLASSIFICATION.

The Supreme Court of Illinois in *People* v. *Hudson*, ——Ill. 2d —— (Docket No. 43994, November 30, 1971); and *People* v. *McCabe*, —— Ill. 2d —— (Docket No. 42674, October 15, 1971), held that an unscientific classification of marijuana in the Uniform Narcotic Drug Act (Ill. Rev. Stat. 1969, Ch. 38, sec. 22-1 *et seq.*) under which defendant was convicted, is "arbitrary and deprives the defendant of equal protection of the law." Under the Uniform Narcotic Drug Act marijuana is classified as a narcotic drug (Ill. Rev. State. 1969, Ch. 38, sec. 22-2.17). Numerous other states employ the same classification. Defendant attacked this classification as being unscientific, contending that: 1) all scientific and medical authorities reject the notion that marijuana is a narcotic drug such as opium, heroin or methadone; and 2) other drugs far more dangerous than marijuana (e.g., LSD, amphetamines) are classified as "depressant or stimulant drugs" and their sale treated as a misdemeanor rather than a felony (Ill. Rev. Stat. 1969, Ch. 111 ½, sec. 80).

Defendant's assertion, adopted by the Illinois Supreme Court, ignored the fact that the term "narcotic drug" as used in the Uniform Narcotic Drug Act is a legal rather than a scientific phrase. *People* v. *Oatis*, 70 Cal. Rptr. 524 (1968). As such, it is not of overriding importance

that marijuana has the same medical properties of other drugs in the classification. What is important is that there be a rational relationship between the substances classified and the legislative object of their classification. Legislation is presumed valid and will be upheld if any state of facts reasonably may be conceived to relate the classification to achievement of the objective and the one attacking a legislative classification has the burden of negating its presumed validity. E. G.: *Mc Gowan* v. *Maryland*, 366 U.S. 420 (1961); *Goesaert* v. *Cleary*, 335 U.S. 464 (1948); *Madden* v. *Kentucky*, 309 U.S. 83 (1940).

The essential error is belief that only one test can be applied. The opinion of the Illinois Supreme Court assumed that laws prohibiting the use of drugs must be exclusively grounded on the pharmacological properties of drugs. This supposition is incorrect. "The Constitution does not require legislatures to reflect sociological insight, or shifting social standards any more than it requires them to keep abreast of the latest scientific standards." *Goesaert* v. *Cleary*, 335 U.S. 464, 466 (1948).

In *People* v. *Stark*, 400 P. 2d 923 (Colo. 1965) the court was faced with the issue at bar. Noting that its statute was in the language of the Uniform Narcotic Drug Act, the court observed that legislative classifications are constitutional even when based on a grouping of disparate items, if those items all bear some reasonable relation to the public purpose sought to be achieved by the legislation involved. It concluded that the use of marijuana and other drugs identified in the statute presented such a substantially similar danger to the community that the legislature could properly proscribe them in a single category:

> "We have held that a legislative classification is constitutional which is reasonable and not arbitrary

and which is based upon substantial differences having a reasonable relation to the objects or persons dealt with and to the public purpose sought to be achieved by the legislation involved.' *McCarty* v. *Goldstein*, 151 Colo. 154, 376 P. 2d 691, quoting with approval *Champlin Refining Company* v. *Cruse, Director of Revenue*, 115 Colo. 329, 173 P. 2d 213.

We recognize that differences of opinion exist as to whether cannabis causes physical or psychological addiction. This fact is not material in determining what drugs may be included within the classification of 'narcotic drugs' in an exercise of police powers by a state. The important and pivotal consideration is whether the classification bears a reasonable relation 'to the public purpose sought to be achieved by the legislation involved.' Clearly, the use of marijuana and other drugs identified in the Colorado statute presents a danger to the public safety and welfare of the community since they are clearly related to each other and to the commission of crime." 400 P. 2d at 927.

The same conclusions were reached after extensive analysis in *People* v. *Oatis*, 70 Cal. Rptr. 524 (1968), and *Commonwealth* v. *Leis*, 243 N.E. 2d 898 (Mass. 1969). In *Oatis* the court quoted extensively from an article by Donald Miller, Chief of the Bureau of Narcotics, United States Treasury, in Vol. No. 1, Journal of the National District Attorney's Association, which discussed the relationship of marijuana to other drugs, and which concluded:

"It, therefore, seems conclusive that the term 'narcotic' as currently used, is a legal term with no precise technical meaning, and it is used to describe a varied assortment of harmful and dangerous drugs. There is a problem of semantics, but the classification should not be upset merely because it is not made with mathematical nicety or because in practice

> the equating of marijuana and the drugs of the opium family results in some inexact reasoning. The wide degree of judicial accord is an indication that the classification of marijuana with the drugs of the opium family is a rational use of the legislature's power."

In the *Leis* case the Supreme Court of Massachusetts had before it a statute which was likewise derived from the Uniform Narcotic Drug Act. After examining the testimony of 18 expert witnesses, the court upheld the classification of marijuana as a narcotic drug. The court found from the testimony that marijuana "is a mind-altering drug," causes an alteration of sensory perception, a degree of phycho-motor discoordination and an inability to concentrate," and that "the effects of smoking marijuana are unpredictable." Finally, after reviewing the evidence as it related to a classification which, like the Illinois statute, places marijuana, a non-opiate with the so-called "hard narcotics" or opium derivatives such as heroin, morphine and codeine, the court said at p. 905:

> "All of these substances are 'mind-altering' drugs. The fact that some are more potent or more dangerous than others does not render the classification arbitrary. To some degree they are all capable of producing psychotic disorders, states of intoxication and psychological dependency; and consequently present some danger to the health and safety of the community. We do not think that the classification of marijuana with the others is arbitrary."

In proffering the above arguments the People are mindful of the authorities cited by defendant which hold that marijuana is at worst a mild stimulant. On the other hand, as indicated by the above cited cases, numerous

authorities believe that it can produce a serious degree of psychological dependence; that it can lead to the use of "hard" drugs, and that there is a causal relationship between the use of the drug and major crime. See also Scher, J., The Marijuana Habit, JAMA, Vol. 214, No. 6 (Nov. 9, 1970); Ball, J., Chambers, C., and Ball, M., "The Association of Marijuana Smoking with Opiate Addiction in the United States," J. Crim. L. C. and P. S., Vol. 59, No. 2, pp. 171-82 (1968); Gardikas, C., "Hashish and Crime," Enkephalos, Vol. 2-3 (1950). One conclusion can be drawn from the myriad of authority both pro and con on the subject:

> "No definitive resolution of the problem concerning the effects of the use of marijuana has been scientifically established and such determination must await considerable research in depth." *United States* v. *Ward*, 387 F. 2d 843, 848 (7th Cir. 1967); *United States* v. *Drotar*, 416 F. 2d 914, 916 (5th Cir. 1969).

In light of the controversy surrounding the subject, action by the Court was hardly appropriate. Faced with a similar barrage of scientific material, both pro and con, the Court in *People* v. *Aguiar*, 65 Cal. Rptr. 171 at 173 took the only rational approach:

> "[*T*]*he validity of legislation which would be necessary or proper under a given state of facts does not depend upon the actual existence of the supposed facts. It is enough if the lawmaking body may rationally believe such facts to be established.* The enactment of laws for the protection of society is for the legislature and not for the courts unless a constitutional right is clearly violated by the statute. The courts must view such a statute * * * as intended to promote the general welfare and to protect the public interest. It is beyond our province to go behind the findings of the legislature and determine

> that there did not exist conditions which would justify the enactment. *It is only when, beyond reasonable doubt, all rational men would agree that the factual background did not warrant the enactment of a statute which was ostensibly designed to preserve the general welfare that we can say that a statute is arbitrary and capricious.*" (Emphasis supplied.)

The court then observed that "it is not for this Court to weigh factfinding studies against each other. This is a legislative function and we leave it to the legislature to determine whether in its wisdom a change in or repeal of existing laws is warranted." 65 Cal. Rptr. at 174.

The Illinois Supreme Court also concluded that the classification of marijuana as a narcotic drug is unconstitutional because the sale of other drugs (eg. LSD; amphetamines) which are allegedly far more dangerous than marijuana are placed in a separate classification and their sale treated as a misdemeanor. Such a conclusion is groundless. Scientifically and medically there is no indication that marijuana is related in any fashion to the drugs referred to by the court. Moreover, since there is much unknown about the effects of marijuana it is impossible to say that, in the long run, it is less dangerous to the user than these other drugs. Further, a classification is not void merely because it does not embrace within it every other class which might be included. *Northwestern Laundry* v. *Des Moines*, 239 U.S. 486, 36 S. Ct. 206 (1915). As has been pointed out above, the test of a classification is the relationship between the various matters classified and the object of the classification. Historically, marijuana has always been closely associated with hard narcotics such as heroin and opium due to the presumption that the abuse characteristics of the drugs are similar: the method of illicit trafficking, the types of users

and traffickers, and the social detriment from their use. The authorities cited by the People show that these presumptions have not been conclusively refuted. Analyzing the same contention, the Supreme Court of Colorado in *People* v. *McKenzie*, 458 P. 2d 232, 233 (1969) concluded that there was no constitutional violation:

> "The contention of the defendant below, based upon Dr. Brown's testimony, is a variation of substantially the same argument presented by the defendant in Stark. There, marijuana was placed in the same category as certain addictive drugs, when, so it was claimed, it should not have been, because the other drugs with which it was classified were more detrimental to the user and society than marijuana; here, the argument is not that the classification is wrong because marijuana is of a lesser danger to users and society than the other drugs with which it is grouped, but that some of the other drugs, such as LSD and methadrine, which are more deleterious to the health of the user and of more danger to society than marijuana, are so classified that their possession is a misdemeanor, whereas the possession of marijuana is a felony.
>
> (1) In approaching this problem, we must recognize that the legislature is free to adopt any classification it deems appropriate to promote the general welfare, so long as the classification bears a reasonable relation to a proper legislative purpose and is neither arbitrary nor discriminatory and operates equally on all persons within the classification. *People* v. *Stark*, supra; *McCarty* v. *Goldstein*, 151 Colo. 154, 376 P. 2d 691; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 31 S. Ct. 337, 55 L. Ed. 369.
>
> (2) Courts recognize the presumption which operates in favor of the reasonableness of the legislative classification. If any state of facts can reasonably be conceived that will justify the classification,

the existence of these facts will be assumed by the courts in order to uphold the legislation. *Lindsley* v. *Natural Carbonic Gas Co.*, supra; *People* v. *Harper*, 1 Mich. App. 480, 136 N.W. 2d 768.

(3) We, of course, do not know what considerations prompted the legislature to classify marijuana with those drugs the possession of which constitutes a felony, rather than with those the possession of which constitutes a misdemeanor. But, if it had before it testimony similar to that of Captain Moomaw of the Denver Police Department, which is quoted in part in Stark, which we assume it had, the basis for its classification would be justified. We cannot say the action of the legislature was arbitrary."

The decision to regulate any given drug is based upon diverse factors of considerable breadth. Existing cultural values and the existing patterns of drug use and abuse are significant. The degree of difficulty in regulating the drug is important. There is concern with whether there is an accepted medical use for a drug and, if so, whether there are any alternative drugs. Society will consider, of course, the pharmacology of the drug and the state of scientific knowledge concerning the drug as well as physical or psychological consequences of its use. Yet the pharmacology of the drug is just one of the factors on which a society may base the classification of dangerous narcotics and permissible drugs. The principles of pharmacology do not dictate or govern legislative declarations.

Drug prohibition is a selective process. If drug prohibition were lawfully based on pharmacology alone the exemption of alcohol, nicotine and caffeine is completely irrational. But society does not base its classifications upon such a narrow basis and there is nothing in the Equal Protection Clause that requires it to do so. In effect, the Court judged the narcotic drug laws by stand-

ards which fail to take into account the non-scientific goals of criminal law and non-scientific value judgments on which it is inevitably based. "If the classification has some 'reasonable basis', it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality.'" *Dandridge* v. *Williams*, 397 U.S. 471, 491 (1970).[1]

The other error committed by the Illinois Supreme Court relates to the nature of scientific tests. At this point in time, the scientific information available regarding the nature of marijuana is both sparse and contradictory (See Appendix D). The Illinois Court even alluded to this fact of insufficient data. Yet the court adopted some of the scientific knowledge now existing and discarded other contrary information. The choice was made without any articulated basis. The Court engaged in activity and reached conclusions which few in the scientific community would imitate or support.

While the scientific "verdict" has been reached for such drugs as heroin and amphetamines, no such finality

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1. As a result of the *McCabe-Hudson* holdings, Illinois courts have begun granting summary reversals in all marijuana cases. (See, eg: *People* v. *Will*, —— Ill. App. 3d —— (Docket No. 54708, December 22, 1971.)). Hence, the classification of marijuana as a narcotic drug is being considered a per se violation of the Constitution. One who sold marijuana on Augst 15, 1971, escapes prosecution while a seller on August 16, 1971, the effective date of the new Illinois Cannabis Control Act, is subject to punishment. This amounts to an "inverse discrimination". *Williams* v. *Illinois*, 399 U.S. ——, 90 S. Ct. ——, 26 L. Ed. 2d 586 (1970); *Tate* v. *Short*, —— U.S. ——, 91 S. Ct. ——, 28 L. Ed. 2d 130 (1971).

has been achieved regarding the long-range personal and societal effects of marijuana. Taking an exclusively scientific test at its face value, the choice becomes where one places an unknown substance. Is it equivalent to heroin or amphetamines: a felony or a misdemeanor? The only sane course of action would be to assume the worst and treat marijuana as a serious threat to the health of the community. To do otherwise would be taking an irresponsible risk with the future. If, a decade from now, further research has shown that the very basis of our society has been altered by the presence of marijuana, it will then be too late to change the situation.

Being elected representatives of the people, accountable to the people, the Illinois General Assembly is fully aware that it would be an abuse of their public trust to chance the welfare of the community on inconclusive scientific data. No legislature should take that risk with people's lives . . . with the life of the nation. Nor should any court consider itself specially gifted to discern tomorrow's tests, to anticipate the outcome of scientific research which scientists themselves cannot foresee.

Indeed, just two weeks after the Illinois Supreme Court reversed Hudson's conviction—just two weeks after that court "predicted" the scientific status of marijuana—a new inquiry was reported in the press. A London study found that continued use of marijuana caused "cerebral atrophy, or irreversible shrinking of brain tissue." Chicago Today, December 14, 1971, at 1, col. 1. Not only is the employment of one test over all others improper, but the very test selected is the most transient and uncertain of measurements. Under this opinion, in Illinois, the equal protection clause means something different with each new issue of the "Journal of the American Medical Association."

The uncertainty of the present scientific analysis of marijuana should have alone caused the Court to hold that the burden of proof carried by defendant was not sustained. The right of the legislature to express and reinforce social values is ignored in the Court's analysis. Yet this right lies at the heart of the substantive criminal law. Indeed it is the response of the legislature to changing values that, in turn, results in changed laws. The Illinois General Assembly's recent enactment of the New Cannabis Control Act,[2] which supercedes and repeals the statute herein involved, is not reflective of prior arbitrariness nor of new scientific knowledge. It is a reflection of this fundamental role of criminal legislation—the expression and enforcement of social values.

In summation, the action of the Illinois Supreme Court in striking down the subject statute as it applies to marijuana usurped the power of the legislature, improperly selected one method of analysis to the exclusion of all other valid criteria, and unjustly relied upon admittedly incomplete scientific information. Petitioner respectfully submits that such action cannot be sustained under the guise of the Equal Protection Clause.

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2. Outright reversals of all marijuana convictions between January 1, 1968 (Drug Abuse Control Act) and August 16, 1971 (Cannabis Control Act) is an anomalous result in light of the legislature's expressed desire to maintain a prohibition on marijuana. The new Cannabis Control Act provides for penalties of 1-7 years for the offense of a first sale or delivery of large quantities of the drug. Corresponding to the rights of an accused "is the societal interest in punishing those whose guilt is clear . . ." *United States* v. *Tateo*, 377 U.S. 463, 84 S. Ct. 1587 (1964).

APPENDIX A

Opinion of the Supreme Court of Illinois, People of the State of Illinois, Appellee v. Howard C. Hudson, Appellant (No. 43924) November 30, 1971.

MR. CHIEF JUSTICE UNDERWOOD delivered the opinion of the court:

After a jury trial in the circuit court of Cook County, defendant, Howard C. Hudson, was found guilty of the unlawful sale of marijuana, (Ill. Rev. Stat. 1969, ch. 38, par. 22—3), and sentenced to not less than 10 nor more than 14 year imprisonment. The appellate court affirmed the conviction (*People* v. *Hudson*, 266 N.E. 2d 481), and we granted leave to appeal. It is necessary to consider only one of defendant's several contentions: that the legislative classification of marijuana as a "narcotic drug" with its attendant sentencing provisions deprived the defendant of due process and equal protection of the law and constituted cruel and unusual punishment.

A majority of this court in *People* v. *McCabe*, No. 43924, held that the classification of marijuana in the Narcotic Drug Act (Ill. Rev. Stat. 1969, ch. 38, par. 22—*et seq.*) under which defendant was convicted, is "arbitrary and deprives the defendant of equal protection of the law.", thereby necessitating reversal of this judgment.

The judgment of the appellate and circuit courts are reversed.

Judgments reversed.

APPENDIX B

Opinion of the Appellate Court, First District, Second Division, No. 52935. (Denied Dec. 8, 1970; Petn. Rhrg. Den., Jan 6, 1971).

Mr. Justice Lyons delivered the Opinion of the Court.

The defendant, Howard C. Hudson, was indicted for the sale of a narcotic drug in violation of Ill. Rev. Stat., ch. 38, §22-3. After a trial by jury, he was found guilty and was sentenced to the Illinois State Penitentiary for not less than ten nor more than fourteen years.

On appeal, the defendant raises four points: (1) there was insufficient evidence to prove that the substance in question was cannabis sativa (marijuana) in accordance with the statutory definition of narcotic drugs; (2) reference by the State during trial to other crimes violated defendant's right to a fair trial; (3) the court failed to instruct the jury concerning the essential elements of the offense; and (4) the prosecutor's closing argument was inflammatory beyond allowable limits.

At trial, Donald Norton testified that he was an Inspector with the Illinois Division of Narcotics and had been so employed for seven and one-half years. He stated that he first met the defendant on October 10, 1966, at a restaurant called "The Hut" in Evanston, Illinois. Norton was seated in a booth with three other persons (Miller Riley, Rogers Nugent and Ann Croft) when the defendant approached and stated, according to Norton, "that I was supposed to do business with him that night and not the other two individuals I was with." Norton, who was operating undercover by the name of Danny, told the de-

fendant that he was busy and might talk to the defendant later.

Norton stated that he next encountered the defendant on October 17, 1966. On that date, Norton and his partner, Inspector Charles McKissack, went into "The Hut" and saw the defendant sitting at the counter. McKissack was operating under the name of Chuck at this time. The three men exchanged greetings and sat in a booth. Norton testified that McKissack inquired about purchasing a "couple of cans" and the defendant quoted a price of $50.00 for two "large cans." The defendant then left the booth to make a telephone call. Norton stated that when the defendant returned from the telephone, hold them that "everything was mellow, and that we could cop," i.e., purchase drugs.

Norton testified that he next saw the defendant on October 27, 1966 and again on November 8, 1966, when the defendant was arrestd.

On cross-examination, the witness testified that he was introduced to the defendant on October 10, 1966, by Ann Croft, who had supplied information to the State Division of Narcotics on prior occasions.

On redirect examination, Norton indicated that Miss Croft accompanied him to "the Hut" of purposes of introducing him to an individual named "Frog." When asked, "Who is 'the Frog'?" the witness replied, "Howard Hudson."

John Carsten testified that he was a narcotics agent with the Illinois Division of Narcotics and had been so employed for three and one-half years. He indicated that he first met the defendant about 8:00 P.M. on October 27, 1966. Carsten was with Inspector McKissack in an un-

marked state vehicle which they parked on the street in front of "The Hut."

McKissack pointed out the defendant, who was standing in front of the restaurant. McKissack left the auto and engaged the defendant in conversation. Carsten stated that he then saw he defendant enter the restaurant, leaving McKissack on the sreet. A few minutes later, the defendant came out of the restaurant and then walked over to the car with McKissack. McKissack introduced Carsten to the defendant. Carsten stated that the two men got into the auto and he drove to the intersection of Church and Darrow Streets in Evanston. There, according to Carsten, the defendant instructed him to park near the intersection and left the vehicle for about twenty minutes. When he returned, the defendant said, "I am unable to find my man." Carsten made a U-turn and drove back to the intersection of Church and Darrow and the defendant said, "There he is now. Stop the car." Carsten indicated that he did not see this other individual but stopped the auto. The defendant got out and returned a short time later and said, "I have the stuff but left—." Carsten then testified that the defendant suggested that they go back to "The Hut" so they "could get the acid." Carsten, however, said: "As long as we have the pot in the vicinity here, let's pick it up now and we can go back to The Hut later." Carsten stated that he then drove around the block and again stopped the car. The defendant left the vehicle "and walked in between two houses into a gangway and returned a few seconds later. In his hand he had two Manila envelopes which he handed to Inspector McKissack." Carsten stated that McKissack then gave the defendant $20.00.

On cross and redirect examinations, Carsten testified that the defendant was not arrested on the night of October 27, 1966, because the defendant had agreed to deliver further amounts of marijuana in the future. No further sales were made, however.

State narcotics inspector Charles McKissack testified that he first met the defendant on October 17, 1966, at "The Hut" in Evanston, Illinois. He was introduced to the defendant by Inspector Norton.

McKissack stated that he next saw the defendant on October 27, 1966, at "The Hut." On this occasion, McKissack was with inspector Carsten in an auto which they parked in front of "The Hut." McKissack saw the defendant standing in front of the restaurant and went over to speak with him. McKissack indicated that he spoke briefly with the defendant and asked: "Can you still do what you said you could do on the phone"? The defendant said "that he thought he could, but he would have to make a phone call first to find out if everything was all right." McKissack then testified that the defendant went into "The Hut" to make a phone call and, after completing his call, returned and said that everything was all right and "that we could come with him and he would take us to a place where we could buy marijuana." McKissack and the defendant then got into the auto and the defendant instructed Carsten, the driver, where to go. On one occasion, the defendant told Carsten to stop the car and left the two inspectors for a short time. When he returned, the defendant indicated that he couldn't find q"the man." Carsten then made a U-turn and the defendant said, "There is the man," and instructed Carsten to again stop the car. McKissack stated that he saw a Plymouth or Dodge with a man in it. The defend-

ant left the auto and disappeared into an alley. When he returned, according to McKissack, the defendant said. "Everything is mellow, we can cop." He then asked McKissack for the money and McKissack gave him twenty dollars. The defendant then went into the alley again and, about forty minutes later, came back in an auto with "the man." The defendant again disappeared for a few minutes and, upon returning, said: "I have hidden the marijuana, let's go get the LSD." McKissack then stated that Inspector Carsten suggested that they get the marijuana first and they did so. McKissack indicated that the defendant gave him the marijuana. Shortly thereafter, the defendant left the company of the inspectors. The inspectors then proceeded to their office and, after properly securing the substance supplied by the defendant, sent it to the Chicago Crime Laboratory for analysis.

On cross-examination Inspector McKissack testified that when he first met the defendant on October 17, 1966, he engaged the defendant in a conversation "relative to my purchasing marijuana." He further stated that he did not arrest the defendant on October 27, 1966 [the date of the transaction]. The arrest was made on November 8, 1966, with the following law enforcement personnel participating: Inspector Norton, Detectives Marshall Barksdale and Davis Schram of the Evanston Police Department, Sergeant Jerry DeGross of the Evanston Police Department, and the witness, Inspector McKissack. Inspector Carsten did not participate in the arrest.

On redirect examination, McKissack testified that no arrest was made until November 8, 1966, because it was not until then that the inspectors had determined that the defendant would not be of use in the development of cases against other offenders in the area. McKissack also

testified that he had a phone conversation with the defendant on October 26, 1966, and, in relating the conversation, stated: "Mr. Hudson answered the phone and I said, 'This is Chuck.' And he didn't remember, or said he didn't. He said, 'Chuck who'? I said, 'Chuck, from Chicago. You remember. I was up there and bought some stuff from you the other day'"? According to McKissack, the defendant then stated that he had some "acid" and some marijuana to sell and the two men agreed to meet at "The Hut" the next evening.

On recross examination, McKissack indicated that on the night of October 27, 1966, after the defendant gave him the two packets of marijuana, they drove to the vicinity of Sherman and Clark Streets in Evanston and stopped. The defendant asked McKissack for an additional $25.00 and McKissack gave him the money. Then, the defendant left the auto and disappeared for about ten minutes. Continuing, McKissack stated: "He came back to the car and handed me a white plastic bottle, the type that you use for nasal sprays, or something like that, and he handed it to me and told me the quality or the strength of the LSD, and that sort of thing." McKissack stated that he and the defendant then had a brief conversation "relative to making additional purchases of marijuana and LSD." McKissack further stated that a chemical analysis of the contents of the bottle proved "negative as to a narcotic and negative as a dangerous drug."

Sergeant Charles Vondrak, a chemist with the Chicago Police Crime Laboratory, testified that he had analyzed the substance [contained in the packets which were given to McKissack by the defendant] and found that it weighed 3.7 grams and was "cannabis, commonly referred to as marijuana."

Officer Marshall Barksdale of the Evanston Police Department testified that he participated in the arrest of the defendant on November 8, 1966. At the time of arrest, the defendant was riding in an automobile with Inspectors Norton and McKissack. Barksdale, driving an unmarked squad car, pulled the inspectors' auto over to the curb and effected the arrest.

On cross-examination, Officer Barksdale testified that he had a warrant for the arrest of Howard Hudson on November 8, 1966.

The defendant's age was stipulated to be twenty years.

The defense introduced evidence of the defendant's good character through Ozella Pratcher, a co-employee and long-time acquaintance of the defendant, and through Reverend Carlis Moody, the pastor of the defendant's church.

Initially, the defendant contends that the evidence was not sufficient to establish that the substance in question was cannabis sativa as defined by statute. The statutory definition, contined in Ill. Rev. Stat. (1965), ch. 38, §22-2-17, reads as follows:

> "Narcotic Drugs" means any of the following: . . .
>
> (3) "Cannabis" includes all parts of the plant Cannabis Sativa L. (commonly known as marijuana), whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, it seeds, or resin; *but shall not include the mature stalks* of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of *such mature stalks* (except the resin extracted therefrom) fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination. . . . [Emphasis added].

Defendant argues that the testimony of Charles Vondrak, the police lab chemist, established only that the substance in question was marijuana, i.e., of the plant Cannabis Sativa L. This testimony, defendant argues, was insufficient to prove that the substance, although marijuana, was a narcotic drug within the meaning of the statute because there was no showing that none of the statutory exceptions, eg., "mature stalk of such plant," was applicable. The defendant contends, in effect, that unlawful marijuana is defined by the exceptions, by what it is not, and suggests that the State has the burden of showing that the marijuana did not come from an excepted part of the plant.

The defendant relies heavily upon *People* v. *Lott*, 24 Ill. 2d 188, 181 N.E. 2d 112 (1962). In *Lott;* the defendant was charged with the sale, possession and dispensing of narcotic drugs. At Lott's trial, a chemist from the Chicago Crime Detection Laboratory testified *on cross-examination* that he subjected contents of certain cigarettes allegedly sold by defendant Lott to Chicago police officers to chemical and microscopic tests and determined that the substance was composed of certain *mature portions* of the cannabis plant. [Emphasis added]. Lott was found guilty by the trial judge who, in giving his reasons for his decision, stated that the defendant thought he was selling marijuana. On appeal, Lott raised an issue identical to the one raised in the instant case, i.e., that the articles sold were not proven to be narcotic drugs under the statute. While it recognized the general rule that when a criminal statute sets forth an exception, which exception operates to prevent an act otherwise included in the statute from being a crime, the burden is on the defendant to bring himself within the exception, the Illinois Supreme

Court found that the defendant had brought himself within the exception by establishing, through cross-examination of the chemist, that the substance analyzed consisted of *mature* portions of the cannabis plant. In addition, the Court recognized that the crime of selling an article under the representation that it is a narcotic drug, when in fact it is not, is separate and distinct from the charges of selling or possessing or dispensing a narcotic drug. See Ill. Rev. Stat. (1965), ch. 38, §22-40. Thus, Lott's conviction was reversed because the State had failed to meet its burden of proof after the exception issue had been raised by the defendant and because the trial court had found the defendant guilty of a crime for which he had not been indicted.

In the case at bar, we find no evidence which shows that the defendant met his burden of establishing an exception under the statute. In addition, we find no indication that the defendant was convicted of a crime for which he was not indicted. It seems clear, therefore, that the *Lott* case is inapplicable here. We do not, however, rest our decision on that determination alone. Ill. Rev. Stat. (1965), ch. 38, §22-44, provides as follows:

> In any complaint, information, or indictment, and in *any action or proceeding* brought for the enforcement of any provision of this Act, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this Act, and the burden of proof of any such exception, excuse, proviso, or exemption, shall be *upon the defendant*. [Emphasis added]

The language of this statute is clear and unequivocal. It places a definite burden upon the defendant to prove the applicability of any exception contained in our Uniform Narcotic Drug Act. No burden is put upon the State, with

respect to an exception, until such time as the defendant introduces evidence to show that an exception is applicable. Because the defendant has introduced no such evidence in the instant case, his first contention must fail. Accordingly, we hold that the evidence in this case was sufficient to prove that the substance in question was a narcotic drug within the statutory definition. See *People* v. *Washington*, 81 Ill. App. 2d 90, 225 N.E. 2d 472 (1967), *aff'd.*, 41 Ill. 2d 16, 241 N.E. 2d 425 (1968); *People* v. *Marichez*, 73 Ill. App. 2d 230, 219 N.E. 2d 625 (1965), *cert. denied*, 389 U.S. 860 (1967).

For his second contention, the defendant asserts that he was deprived of his right to a fair trial because the testimony of Inspector McKissack included references to other offenses committed by the defendant. Specifically, the defendant refers to McKissack's testimony about the LSD purchase and his testimony concerning a phone conversation in which he stated that he had made prior purchases from the defendant.

While it is true that parts of McKissack's testimony suggest the commission of exra-indictment offenses by the defendant, we do not agree that the testimony was erroneously admitted by the trial court. We do not believe that the evidence of other offenses was introduced for the sole purpose of showing the defendant's propensity toward committing crimes like the one for which he stood indicted. Therefore, the recent case of *People* v. *Meid*, No. 69-167 (Ill. App. 2d Dist., filed Sept. 3, 1970) (*rehearing granted*), upon which the defendant relies, is not on point here. We believe that under the circumstances of this case the facts concerning the LSD purchase and the telephone conversation were all a part of the continuing narrative which concerned the events attending the entire

ple v. *Brown*, 89 Ill. App. 2d 231, 231 N.E. 2d 262 (1967). *See also United States* v. *Kahn*, 381 F. 2d 824 (7th Cir. 1967), *cert. denied*, 389 U.S. 1045 (1967).

For his final contention defendant argues that certain remarks made by the prosecutor during final argument were prejudicial and inflammatory beyond tolerable limits. The particular statements complained of are as follows:

> A sale is not consummated at State and Madison, in full view of hundreds of people. This is not the type of merchandise that is offered quite legitimately. This is a dirty business, they are dealing in slow death. . . . Do not permit them to die from marijuana drugs. . . . It better be stopped right here in court. It better be stopped by you twelve ladies and gentlemen of the jury and not by a lot of nonsense. . . . this danger again: young people that get this marijuana, this marijuana that cripples their ability to reason, to act, to think. . . . Cripples their ability to act as human beings. Who pays the ultimate penalty? You, you, and you, to support the habit.

Defendant properly points out that there is a legitimate dispute being waged among scientists over the effects of marijuana upon the human system. But, though we are interested in such matters, we express no opinion as to the possible physiological or psychiatric effects which marijuana may have upon a human being. We are concerned with the propriety of the prosecutor's closing remarks. In this connection, we are mindful that considerable latitude has traditionally been allowed in closing argument. And, through a careful scrutiny of the prosecutor's argument discloses that in a few instances he may have transcended the bounds of legitimate argument, a reversal is not warranted unless it appears that the prosecutor's remarks so

influenced the jury that the defendant was substantially prejudiced. See *People* v. *Hampton*, 24 Ill. 2d 558, 182 N.E. 2d 698 (1962), *cert. denied*, 371 U.S. 851 (1962); *People* v. *Lopez*, 10 Ill. 2d 237, 139 N.E. 2d 724 (1957), *cert. denied*, 353 U.S. 925 (1957). Here the jury returned a just verdict. Indeed, it was the only reasonable conclusion to be reached on the basis of the evidence adduced at trial.

Accordingly, the judgment is affirmed.

Judgment Affirmed.

McCormick, P. J., and Burke, J., concur.

APPENDIX C

Opinion of the Supreme Court of Illinois. People of the State of Illinois, Appellee v. Thomas McCabe, Appellant (No. 42674)

Following a jury trial in the circuit court of Kane County the defendant, Thomas McCabe, was found guilty of the unlawful sale of marijuana in violation of the Criminal Code of Illinois. (Ill. Rev. Stat. 1969, ch. 38, par. 22-3). Pursuant to the provisions for mandatory minimum penalties for the unlawful sale of a narcotic drug (Ill. Rev. Stat. 1969, ch. 38, par. 22-40 the defendant, who had no prior convictions, was sentenced to the penitentiary for a period of ten years to ten years and a day. On this appeal he raises these grounds for reversal: (1) the classification of marijuana in the Narcotic Drug Act (Ill. Rev. Stat. 1969, ch. 38, par. 22-1 *et seq.*), with mandatory minimum statutory penalties for a first conviction, deprives the defendant of due process and equal protection of the law in violation of the constitution of Illinois and the constitution of the United States; (2) the Narcotic Drug Act's mandatory minimum ten-year sentence and its prohibition of probation or the suspension of sentence upon a first conviction for the sale of even a trifling amount of marijuana to an adult constitutes cruel and unusual punishment in violation of the constitution of Illinois (Const. of 1870, art. II, sec. 11) and the constitution of the United States (U.S. Const., amend. VIII); (3) the defendant was deprived of equal protection of the law in that no meaningful post-trial hearing in mitigation was held; (4) the trial court erred in numerous evidentiary rulings; (5) the closing argument of the prosecutor was improperly prejudicial to the defendant; (6) the trial court erred in in-

structing the jury; and (7) the mandatory minimum penalty provision of the Narcotic Drug Act unconstitutionally interferes with the prerogative and the duty of the judiciary to impose sentence as the exercise of sound discretion may direct.

To begin it will be helpful to exclude some of the potential questions the defendant does not raise regarding the classification of marijuana. It is not denied, for example, that the State has authority under its general police power to prohibit the sale, use, or possession of marijuana. Nor does the defendant contend that the State must limit its exercise of that power to the regulation, as opposed to the prohibition, of the drug. Finally, the defendant does not claim that the State, having chosen to proscribe the use, possession, and sale of marijuana, must similarly act in the cases of substances such as alcohol, tobacco and caffine, whose use may be harmful.

The equal-protection argument which is raised is narrow and limited. It simply is that the present placing or classifying of marijuana under the Narcotic Drug Act rather than classifying it under the Drug Abuse Control Act (Ill. Rev. Stat. 1969, ch. 111½, par. 801 *et seq.*) with the "stimulant or depressant" drugs is constitutionally invalid as an improper classification, considering the present state of knowledge concerning the comparative natures and effects of the drugs named in the two statutes. Unlike the Narcotic Drug Act, which provides for a mandatory ten-year minimum sentence upon a first conviction for the sale of marijuana, the Drug Abuse Control Act provides, upon a first conviction for the sale of drugs named in it, a maximum jail term of but one year and probation is not prohibited. The defendant says that there is no rational basis for distinguishing a first sale of mari-

juana from the first sale of a stimulant or depressent drug under the Drug Abuse Control Act and that the gross disparity between the penalties violates his rights under the equal-protection clause.

In determining whether a statutory classification violates the equal-protection clause, we must begin with the presumption that the classification is valid and must impose the burden of showing invalidity on the party challenging the classification. (*City of Rockford* v. *Grayned*, 46 Ill. 2d 486; *Thillens, Inc.* v. *Morey*, 11 Ill. 2d 579, 591; *People ex rel. Vermilion County Conservation District* v. *Lanover*, 43 Ill. 2d 209, 219). The equal-protection clause does not deny the States the power to classify in the exercise of their police power and it recognizes the existence of a broad latitude and discretion in classifying. *Begich* v. *Industrial Co.*, 42 Ill. 2d 32, 36). If any state of facts may reasonably be conceived which would justify the classification, it must be upheld (*see Begich* v. *Industrial Com.*, 42 Ill. 2d 32). The right of judicial questioning of a classification under the equal protection clause is thus limited. As this court put it in *Thillens, Inc.* v. *Morey*, 11 Ill. 2d 579, 593, "Whether the enactment is wise or unwise; whether it is based on sound economic theory; whether if is the best means to achieve the desired results, and whether the legislative discretion within its prescribed limits should be exercised in a particular manner are matters for the judgment of the legislature, and the honest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance." But it is required that there be a reasonable basis for distinguishing the class to which the law is applicable from the class to which it is not. (*People ex rel. County of Du Page* v. *Smith*, 21 Ill. 2d 572, 578.) Appropriate respect should be

be given to the fact of a legislative classification, but there is a judicial obligation to insure that the power to classify has not been exercised arbitrarily and, if it has been, the legislation cannot be justified under the label of "classification." (*Begich* v. *Industrial Com.*, 42 Ill. 2d 32, 36). It was observed recently: "[A] state may not, under the guise of classification, arbitrarily discriminate against one and in favor of another similarly situated." *Lake Shore Auto Parts Co.* v. *Korzen*, Nos. 44199, 44308, 44432 cons. May Term, 1971.

Measuring by these criteria we must determine whether any rational basis exists to justify the substantially greater penalties imposed for a first conviction for the sale of marijuana than for a first conviction for the sale of a drug named in the Drug Abuse Control Act. This consideration will require an assessment of the relevant scientific, medical and social data found, including the voluminous materials assembled by the parties here, which are pertinent to support and to defeat the classification. We are aware that any compilation and examination of materials cannot comprehend all studies that have been made. We know, too, that knowledge in this whole area is not nearly complete. We proceed not to determine scientific questions, but to judge whether the data presently available provides a reasonable basis for the described classification of marijuana. (*Cf. Precision Connecting Rod Service* v. *Industrial Com.*, 40 Ill. 2d 277, 281.) The consideration of this data, of course, will not extend to the wisdom or unwisdom of the legislative classification. We confine our examination to the question whether the challenged classification can be supported on any rational basis.

Knowledge of the characteristics and effects of the drug commonly called marijuana, which is obtained from the leaves of the female hemp plant, *cannabis sativa*, has de-

veloped rapidly in the last decade. Studies by Presidential commissions, whose memberships have invluded psychiatrists, pharmacologists, sociologists and law enforcement officials as well as intensified research in the medical and scientific communities have contributed to this advancement. The consensus is that although marijuana has been commonly associated with the opiates, such as morphine and heroin, there are important differences between the so-called abuse characteristics of the two. Heroin and morphine are true narcotic analgestics in the sense that their use produces a marked indifference to pain. In addition, when injected intravenously a warm flushing of the skin and intense pleasurable sensations in the lower abdomen will result. Repeated usage of these drugs in a comparatively short time will result in the development of a tolerance, that is, a state which requires a gradually increasing dosage to permit the drug to attain the ecect desired. Both a psychological and compelling physical dependence result from the use of "hard narcotics." The physical dependence develops in intensity with continued use and requires the continued administration of the drug to avoid withdrawal symptoms. It appears that the subjective action of the morphine-type drugs also involve changes in mood, an inability to concentrate and the development of apatly. Physical degeneration occurs, arising from drug preoccupation, personal neglect, manutrition and susceptibility to infections. Overdosage can cause death through excessive respiratory depression.

Early withdrawal symptoms include lacrimation, nasal discharge, yawning and perspiration. Later, dilated pupils, loss of appetite, gooseflesh, (thus, the expression "cold turkey") restlessness and increased irritability and tremor will appear. At its peak intensity, the syndrome includes

high irritability, insomnia, violent yawning, severe sneezing and lacrimation. Nausea and vomiting are common, as are intestinal spasms and diarrhea. Increased heart beat and elevated blood pressure, as well as muscular spasms, abodminal cramps and pains in the bones and muscles of the back are common. Death due to cardiovascular collapse can result from withdrawal. These symptoms are caused by the drug-induced alterations at the cellular level, most prominently in the central nervous system. Most authorities consider that the drug addict's frequent involvement in criminal activity results from his acute need for the drug rather than because of the action of the drug itself. The term addiction refers to the physical, rather than a psychological dependence on the drug.

Cocaine, which is placed with marijuana and the opiates in the Narcotic Drug Act, is a powerful stimulant, whereas the morphine-type drugs have a depressing action. Too, cocaine is further unlike the opiates in that it does not have effects of tolerance or physical dependence and abstention does not cause acute withdrawal symptoms. However, because of its potent nature, it induces intense physical and mental excitation and a marked reduction in normal inhibitions which often results in aggressive and even violent behavior. Intense hallucinations and paranoid delusions are common and, because of this, cocaine users frequently attempt to dilute the experience with a depressant such as heroin or morphine.

The properties and consequences of the use of marijuana differ from those attending the use of opiates or cocaine. The acute physical symptoms of marijuana use typically induced are an increase in pulse rate, a slight elevation in blood pressure, conjunctival vascular congestion, a rise in blood sugar, urinary frequency, dryness of the mouth and throat. Nausea, vomiting and occasional diarrhea have

been observed; as has the inability to coordinate voluntary muscular movements. There is usually a marked increase in appetite. Deaths due to overdose apparently have not been reported.

The mental or subjective effects of the administration of this drug are variable and depend on the interaction of several factors including the physical and pharmacological properties of the particular marijuana used, the amount of dosage, and more importantly, what has been called the character structure of the user, (including his experience with the drug, his attitude and expectations) and the social setting and environment in which the drug is used. The most common reaction is the development of a euphoric state of altered consciousness in which ideas seem disconnected, uncontrollable and freely flowing. Time perception is distorted with minutes seeming like hours. Spatial conception may also be disturbed. Vivid hallucintions, usually, but not always, pleasant, can occur with increased dosage. There may be marked alterations of mood, usually manifested by an extreme feeling of well being which is often accompanied by uncontrollable laughter. Later a more somber or depressed mood will appear. The drug's influence can cause anxiety, confusion or disorientation, and with larger doses temporary psychotic episodes have been observed in predisposed individuals. Inhibitions are reduced but violent or otherwise aggressive behavior seem to be rare.

Almost all authorities agree that marijuana is not a narcotic or addictive in the sense that the terms are precisely used. Unlike the opiate drugs, it does not produce a physical dependence, and upon abstention there are no withdrawal symptoms. A tolerance to the drug does not develop. Marijuana use does, however, lead to a mild psy-

chological dependence. The short-hand descriptive phrase most often applied to the drug is "mild hallucinogen," although this refers to only one of its many effects.

The depressant and stimulant drugs within the Drug Abuse Control Act include the barbiturates (depressants), the amphetamines (stimulants), and the hallucinogens. The drugs psilocybin, peyote, mescaline and what is commonly called LSD are examples of the hallucinogens. Frequent use of the barbiturates at high dosage levels leads invariably to the development of physical dependence, tolerance and severe withdrawal symptoms, similar to those associated with heroin use. The effects of barbiturate intoxication resemble those of alcoholic intoxication. There is a general sluggishness, difficulty in concentrating and thinking, speech impairment, memory lapse, faulty judgment and exaggeration of basic personality traits. Irritability and quarrelsomeness are common. Hostile and paranoid ideas as well as suicidal tendencies can occur. Barbiturates are said to be the most frequently used chemical in suicides in the United States. Accidental death from an overdose also can occur. There is a clear association between barbituric intoxication and accidents and traffic fatalities. The drug can depress a wide range of functions, including the nerves, skeletal muscles and the cardiac muscle. Barbiturates are frequently used by heroin addicts to boost the effect of weak heroin.

The consensus of the amphetimines (stimulants) is that, unlike the barbiturates, their abuse does not lead to a physical dependence, but the development of a high tolerance and a strong psychological dependence are common. Occasional dosage under medical supervision causes only an elevation in mood and a state of well-being. Long term dependence, however, leads to serious mental and phy-

sical problems. Malnutrition and debilitation due to self-neglect will appear. A well known complication of amphetamine abuse is paranoid schizophrenia. The user may react violently to his persecutive delusions. Visual and auditory hallucinations occur and can persist long after use is discontinued. Although true withdrawal symptoms do not occur, the later stages of excitement and mental disarrangement are difficult to endure. To take the edge off this tense euphoria, the user will sometimes turn to barbiturates or the opiates.

Special mention should be made of one particular amphetamine, methamphetamine, commonly called "speed." Its effects are generally the same as other amphetamines, only markedly intensified. There is evidence that large doses result in permanent brain damage. The drug's lethal qualities are well documented. The potential for violence, paranoia and physical depletion are substantially more severe.

Also placed under the Drug Abuse Control Act are the hallucinogens or the "psychedelics." LSD is the best known and one of the highly potent forms of these drugs. Less potent hallucinogens include psilocybin, peyote, and mescaline and hashish (another derivative of the plant from which marijuana comes). As with marijuana usage, a true physical addiction does not occur with LSD, in that withdrawal effects do not follow abstinence. Frequent use of LSD will lead rapidly, however, to the development of a high tolerance. Phychological dependence develops as it does with exposure to almost any substance which alters the state of consciousness. During LSD-intoxication severe panic and paranoid reactions are encountered. Attempts at suicide as well as uncontrolled

aggression are among the dangers to the intoxicant. Hallucinations are common, accompanied by feelings of grandiosity and omnipotence. Recurrences of the LSD experience weeks or months after the last drug intake are well known. Various emotional disorders have been observed following exposure to LSD. A chronic anxiety state is the most common. Prolonged psychotic reactions also have been identified with LSD. Too, there is also growing evidence that LSD can cause chromosomal damage.

Against this background of comparison one would conclude that neither the chemical properties of the drugs nor their effects on the behavior of the users provides any justifiable or reasonable basis for the sharply disparate penalties which are imposed for a first sale of marijuana and for a first sale of a drug under the Drug Abuse Control Act. Too, the consequences of abusive use of marijuana certainly appear not to be comparable to the demonstrated and profound ill-effects of opiate or cocaine addiction. Marijuana, in terms of abuse characteristics, shares much more in common with the barbiturates, amphetamines and, particularly, the hallucinogens than it does with the "hard drugs" classified in the Narcotic Drug Act. Marijuana does differ from the barbiturates and amphetamines in that it has no established medical use, but neither do LSD, peyote, or mescaline. Thus, one cannot reasonably distinguish marijuana from the substances under the Drug Abuse Control Act on this basis.

Nor is there any reasonable basis for placing marijuana under the Narcotics Drug Act and not under the Drug Abuse Control Act because of any compulsion to abuse. The compulsion associated with marijuana has been described as moderate or mild. The same is true of the amphetamines. The opiates and cocaine, on the other hand;

have a maximal compulsive quality in this regard. Barbiturates, too, have this quality. Thus, in this respect, marijuana is dissimilar from the other drugs in the Narcotic Drug Act. Indeed, from this limited standard of comparison it is the barbiturates under the Drug Abuse Control Act, and not marijuana, which approximate the characteristics of the true narcotics.

Another factor which has been frequently advanced to provide a justifiable basis for classifying marijuana under the Narcotic Drug Act rather than under the Drug Abuse Control Act is that the use of marijuana progresses to heroin use and addiction. This thesis, once broadly entertained, has recently encountered serious challenge. Today it is reported that the vast majority of marijuana users do not graduate to the use of heroin. In 1969, Dr. Stanley F. Yolles, then Director of the National Institute of Mental Health, testified before the Congress that there is nothing in the properties of marijuana which predisposes the use of heroin. He also estimated that only a small percentage of chronic users of marijuana go on to use heroin. This is not to deny any association between marijuana which predisposes the use of heroin. He also estimated that only a small percentage of chronic users of marijuana go on to use heroin. This is not to deny any association between marijuana and heroin. The most commonly accepted thesis today is that a drug sequence or movement from one drug to another results from the cumulative effect of several factors, including: the pharmacological properties and effects of the drugs, the personality structure of the user, and the pressures of the so-called host environment. Thus, the chronic use of any drug presents a danger of graduation to other and more dangerous drugs. Observed, for example, has been a clear

association between barbiturate abuse and heroin addiction. The barbiturate-heroin connection is also true with respect to the criminal trafficking in these drugs. Whatever can be said of marijuana use leading to the use of other and so-called harder drugs can be applied, and to a probably greater extent, to barbiturates, methamphetamine and LSD.

The extensi criminal involvement of persons addicted to heroin is well known. The intense craving for the drug, and the dread of symptoms following its withdrawal lead addicts to engage in criminal activities to finance their habit. It has been said that marijuana use also causes violence, crime and antisocial acts. However, since tolerance, physical dependence, or withdrawal symptoms do not attend its use, this thesis has been criticized. Some say that since the effect of marijuana is to induce a passivity in the user, the drug has a negative relation to criminality and aggressive behavior. But as marijuana is generally a disinhibitor, it must be recognized that antisocial conduct can occur in a predisposed individual. But this is, of course, equally true regarding the stimulant or depressant drugs and the hallucinogens. And, violent and aggressive conduct is a more common reaction to these latter drugs because of the paranoiac psychosis which they can produce in the user. Thus, it can be concluded that the thesis that marijuana use, as does the use of the opiates and cocaine, leads to criminal activity cannot provide a basis for distinguishing marijuana from the depressant and stimulant drugs or the hallucinogens.

Observations to be drawn on marijuana are that it is not a narcotic and it is not truly addictive. Its use does not involve tolerance, physical dependence or the withdrawal syndrome. Physical ill effects from its use

are, so far as is known, relatively moderate. Its abuse does not have the profound and ill consequences observed in the use of some of the other drugs considered. Its use does not singularly or extraordinarily lead to opiate addiction or to aggressive behavior or criminal activity.

Against the entire background of the drugs considered we judge that the classification of marijuana under the Narcotics Drug Act rather than under the Drug Abuse Control Act has been arbitrary. A comparison of the drugs leads to a conclusion that marijuana more closely resembles drugs placed in the Drug Abuse Control Act. It is, comparatively speaking, dissimilar from drugs under the Narcotic Drugs Act. We do not find a rational basis for the classification, a consequence of which is that one first convicted of the sale of marijuana must without qualification receive a sentence ten times greater than one permitted to be imposed on one convicted for the first time of a sale of drugs under the Drug Abuse Act. The absence of a rational basis for distinguishing first convictions for sales of marijuana from first convictions for sales of drugs placed in the Drug Abuse Control Act compels the conclusion that the present classification of marijuana offends the equal-protection clause of the United States constitution and our new constitution of Illinois and was in violation of section 22 of article IV of the former constitution of this State.

We would observe that the legislature has recently removed marijuana from the Narcotic Drug Act and reclassified it under the Cannabis Control Act, H.B. 788, P.A. 77-758, approved August 16, 1971. Henceforth, a first sale of a small quantity of marijuana to an adult, as was the case here, will result in only minor criminal penalties. This reclassification is not inconsistent with what we have said here.

It is appropriate to note that we are not unmindful of the prior Federal and State decisions which had rejected constitutional attacks on Federal and State statutes classifying marijuana with the "hard drugs." (See *United States* v. *Eramdjian* (S.D. Cal. 1957), 155 F. Supp. 914; *State* v. *White*, 153 Mont. 193, 456 P. 2d 54; *Borras* v. *State* (*Fla.*), 229 So. 2d 244, *Raines* v. *State* (*Fla.*), 225 So. 2d 330, *People* v. *Stark*, 157 Colo. 59, 400 P. 2d 923; *Spence* v. *Sachs*, 173 Ohio St. 419, 183 N.E. 2d 363; *People* v. *Walton*, 116 Ill. App. 2d 293; *Gonzales* v. *State*, (Tex. Crim. App.) 373 S.W. 2d 55; *Commonwealth* v. *Leis*, 355 Mass. 189, 243 N.E. 2d 898.) We would point out that the constitutional ground raised by the defendant here was not presented in any of the cited cases.

The State contends that the constitutional argument which the defendant has presented here was waived and not preserved for review because it was not raised in his written motion for a new trial. The record shows that the defendant plainly raised the constitutional question in his pretrial motion to quash the indictment, argued it, and secured the court's ruling on the question. It was not the character of claimed error to be raised on a motion for a new trial. *People* v. *Irwin*, 32 Ill. 2d 441, 444.) He referred to the constitutional point orally in his post-trial motion and we regard that as an oral motion for arrest of judgment. We consider that the defendant preserved the constitutional question for review. *People* v. *Irwin*, 32 Ill. 2d 441, 444.

We hold that the present classification of marijuana is arbitrary and deprives the defendant of equal protection of the law. The remainder of the Narcotic Drug Act is not affected by this holding, as we judge it is severable

(see *People ex rel. Adamowski* v. *Wilson,* 20 Ill. 2d 568) from that portion of the statute which concerns marijuana.

It will not be necessary to consider the other contentions advanced by the defendant. For the reasons given, the judgment of the circuit court of Kane County is reversed.

Judgement reversed.

MR. JUSTICE SCHAEFER took no part in the consideration or decision of this case.

MR. CHIEF JUSTICE UNDERWOOD, dissenting:

Subsequent to defendant's conviction under Narcotic Drug Act and while this appeal was pending, the General Assembly enacted the Cannabis Control Act, H. B. 788, P.A. 77-758, which provides for substantially reduced criminal penalties for possession and sale of marijuana. Section 18 of that Act provides: "Prosecution for any violation of law occurring prior to the effective date of this Act is not affected or abated by this Act. If the offense being prosecuted would be a violation of this Act, and has not reached the sentencing stage or *a final adjudication,* then for purposes of penalty the penalties under this Act apply if they are less than under the prior law upon which the prosecution was commenced." (Emphasis supplied.)

In my opinion, this provision regarding sentencing may reasonably be interpreted to include all cases still in the appellate process, *People* v. *Vernon R. Bailey,* —— Ill. App. 2d ——; *People* v. *Carleton,* 116 Ill. App. 2d 450) and would therefore apply to this case. Accordingly, I would not reach the constitutional question presented and would remand for resentencing in compliance with the sentencing provisio of the Cannabis Control Act.

However, since the majority concludes that the inclusion of marijuana in the Narcotics Drug Act is an unconstitutional classification, it is necesary to state my further disagreement with that conclusion. Defendant concedes that when the first Illinois drug act was passed in 1931, the combining of marijuana with "hard drugs" seemed to be ligitimate, and that if only "hard drugs" were prohibited in Illinois, it still might not be irrational to put marijuana in that category. Defendant contends, however, that after the legislature created a second and lesser category of prohibited drugs by enacting the Drug Abuse Control Act in 1967, it was no longer rational to continue "to assign marijuana to the category with which it has much less in common, rather than to the category with which it has much more in common."

The majority's lengthy discussion of the characteristics and effects of marijuana as compared to other prohibited drugs clearly illustrates that no two drugs are identical and that marijuana is also quite different from the stimulant or depressant drugs with which defendant seeks to classify it. The fact that a substantial body of scientific and medical opinion now considers marijuana to be more nearly like the drugs included in the Drug Abuse Act than those prohibited by the Narcotic Drug Act does not, in my opinion, necessitate the conclusion that there was no rational basis for the classification in question. Medical and scientific opinion is even now by no means unanimous in condemnation of classifications of marijuana with "hard drugs" and, as the majority notes, "knowledge in this whole area is not nearly complete." In the absence of more nearly conclusive evidence that the legislative judgment was devoid of any rational basis, a finding of unconstitutionality is unwarranted, for few

rules of law are more soundly bottomed than that which proscribes judicial interference with legislative discretion. As this court said in *Thillens, Inc.* v. *Morey,* 11 Ill. 2d 579, 593: "Whether the enactment is wise or unwise; whether it is based on sound economic theory; whether it is the best means to achieve the desired results, and whether the legislative discretion within its prescribed limits should be exercised in a particular manner are matters for the judgment of the legislature and honest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance." In the context of current drug knowledge I would uphold the former statutory classification of marjuana within the Narcotics Drug Act as a constitutional exercise of legislative discretion.

Accordingly, I would affirm the conviction and remand for resentencing under the sentencing provision of the Cannabis Control Act.

MR. JUSTICE RYAN, also dissenting:

I join in the dissent of Chief Justice Underwood and add thereto the following:

The majority opinion does not focus on what I consider to be the critical aspect of the question of classification. The majority is concerned with the characteristics of the various drugs discussed and their effects on the human body and behavior pointing out similarities and differences. I do not consider these comparisons important. Instead we must be concerned with the purpose of the classification and the problems the legislature was attempting to alleviate thereby. In *Billings* v. *Illinois,* 188 U.S. 97 at 101, 47 L. Ed. 400, 23 S. Ct. 272, the court stated: "Things may have very diverse qualities, and yet be united in a class. They may have very similar quali-

ties, and yet be cast in different classes.—All classification must primarily depend upon purpose—the problem presented".

In 1931 marijuana, opium and cocoa leaves were classified together in the Narcotic Drug Control Law (Ill. Rev. Stat. 1931, Ch. 38, par. 192 (a) *et seq.*) and penalties were provided for the illegal sale and possession thereof. In 1957 Illinois adopted the Uniform Narcotic Drug Act. (Ill. Rev. Stat. 1957, Ch. 38, par. 192.27-2.17). The list of drugs brought within the Act had increased to eleven in number and by 1967 the number of drugs included in the classification had grown to fifteen. A reading of these various Acts makes it clear that the legislature was not attempting to classify drugs of similar characteristics and effects but was attempting to classify these drugs for the purpose of combating the social evil found in the illegal sale possession and use of the same.

In 1967 the legislature enacted the Drug Abuse Control Act, (Ill. Rev. Stat. 1967, Ch. 111½, par. 801 *et seq.*) In this Act, as the Uniform Narcotic Drug Act, drugs of diverse characteristics and effects are grouped together for the purpose of controlling the illegal traffic in the various members of the class. The majority opinion concludes that marijuana more closely resembles the new list of drugs classified under the Drug Abuse Act, thus rendering the present classification of marijuana violative of the equal-protection clause.

The conclusion of the majority ignores the fact that traffic in marijuana had been a social problem of sufficient magnitude to warrant legislative action for many years. Material submitted with the briefs indicates that although a relatively small percentage of marijuana users become addicted to the so-called "hard drugs" a high

percentage of "hard drug" addicts first become acquainted with the use of drugs through the use of marijuana. Also, certain studies indicate that marijuana is the most widely used drug among the young drug users. These are facts which the legislature may well have considered as justification for retaining marijuana under the Uniform Narcotic Drug Act and for not classifying it with the drugs listed in the Drug Abuse Control Act. The presumption of the reasonableness of the classification is with the State and the same will not be set aside as a denial of equal protection if any facts reasonably may be conceived to justify it. *Salesburg* v. *Maryland*, 346 U.S. 545, 98 L. Ed. 281, 74 S. Ct. 280; *Metropolitan Casualty Ins. Co.* v. *Brownell*, 294 U.S. 580, 584, 79 L. Ed. 1070, 1073, 58 S. Ct. 538.

The defendant's brief has also focused on the characteristics and effects of the various drugs and has ignored the problem-to-be solved approach. The burden is on the defendant to present evidence which shows that the apparently reasonable basis for this classification does not exist: *Williamson* v. *Lee Optical of Oklahoma*, 348 U.S. 483, 99 L. Ed. 563, 75 S. Ct. 461; *McGowan* v. *Maryland*, 366 U.S. 420, 6 L. Ed. 2d 393, 81 S. Ct. 1101.) The defendant has failed to produce any evidence concerning the nature of the traffic in the various drugs or the need to control the same. The presumption of the validity of the classification must therefore prevail.

A further reason for my dissent concerns the failure of the defendant to present any evidence on the subject of the invalidity of the classification. A motion to quash the indictment raised the question but no evidence was offered by the defendant at the hearing thereon. The evidence offered at the trial concerned the question of guilt of innocense and not characteristics and

effects of the drugs. The majority opinion acknowledges that "we must begin with the presumption that the classification is valid and must impose the burden of showing invalidity on the party challenging the classification." Ths burden is not satisfied by argument or briefs but by coming forward with proof, by presenting evidence. This the defendant has not done so there is no basis in the record for the findings and comparisons set forth in the majority opinion concerning the properties of the various drugs. Both the defendant and the People filed lengthy briefs containing citations to and quotations from many, many, articles, reports, and studies. The briefs represent a very detailed and well prepared presentation of the entire subject but *are not evidence.* The burden was on the defendant to present facts and circumstances in evidence from which the determination could be made that the classification in question violates the equal-protection clause. (*Gadlin* v. *Auditor of Public Accounts,* 414 Ill. 89, 95; *Thillens* v. *Hodge,* 2 Ill. 2d 45, 56; *Thillens* v. *Morey,* 11 Ill. 2d 579, 591.) In *Union Cemetery Ass'n.* v. *Cooper,* 414 Ill. 23 this court held that a distinction in legislation is not arbitrary if any state of facts can be reasbnable conceived that would sustain it, and the existence of that state of facts at the time the law was enacted must be assumed *in the absence of proof. or judicial knowledge* to the contrary.

There is a great diversity of opinion as to the effects of marijuana. As the majority opinion states, knowledge in this area is not nearly complete. This court cannot, therefore, take judicial notice thereof. *People* v. *Price,* 257 Ill. 587, 594.) The defendant having offered no evidence thereon, this court cannot make finding and comparisons of marijuana with the other drugs. With the record in this state, the defendant has not sustained the burden of proving the classification invalid.

APPENDIX D

Marijuana: A Summary Analysis.

PHYSIOLOGICAL EFFECTS

Medically, relatively little is known about the exact effects of cannabis injection on the physiology of man. In man, it is presumed that the significant action of the drug are manifested in changes referable to the central nervous system. The current physiological data may be thus summarized.

When cannabis is acquired by inhalation of its smoke, effects may occur within a few minutes and the duration of effect is relatively brief. After ingestion, usually of the more purified resin, one-half to one hour may elapse before onset of any effect, however, the influence may persist for several hours. During the short-term usage with moderate dosages of low potency cannabis, the recognized physiological changes are minimal. Dr. Andrew T. Weil, author of "Cannabis," *Science Journal* (September, 1969), believes that only two have been established beyond question: 1) conjunctival vascular congestion; and, 2) tachycardia. Although some authorities disagree, there appears to be little or no changes in respiratory rate, pupil size, and blood sugar levels. A dry mouth and throat in addition to an increase in appetite are common. Coordination may be slightly altered. Other occasional physiological effects appear inconsistently or are not reproducible. Lethal dosages have been established for animals, given orally, but there has been no verified cases of a human fatality from the drug.

The physiological scene appears different, however, when there occurs long-term usage with constant dosage

of high potensy cannabis. Several eastern studies of chronic users, who consume several times the amounts generally used in this country, hypothesize a variety of cannabis-induced physical ailments. Conjunctivitis, is the most frequent, followed by chronic bronchitis, numerour digestive ailments, and difficulties in sleeping. Within this context, although research is not definitive, there is evidence that cannabis abuse can be seriously physically harmful.

Recently, Dr. Wesley Hall, the president-elect of the American Medical Association noted that the incidence of birth defects in children whose mothers smoked marijuana is "definitely far higher" than normal, smoking marijuana may lead to early sexual impotence in men, and, that the use of marijuana mitigates the postive effects of nutrition. Chicago Today, Mar 2, 1970 at p. 20.

See, Chopra, R., and Chopra G., "The Present Position of Hemp-Drug Addiction in India" in *Indian J. Med. Res. Memoirs* 31:1-119 (1939); McGlothlin, W., and West, L., "The Marihuana Problem: An Overview" in *Amer. J. Psychiat.* 125:3 (Sept. 1968); Bloomquist, E., "Marijuana: Social Benefit or Social Detriment" in *Calif. Med.*, 106: 346-53 (May 1967); Haislip, G., "Current Issues In The Prevention and Control of Marihuana Abuse" (Paper presented to the First National Conference of Student Drug Involvement sponsored by The United States National Student Association at the University of Maryland, August 16, 1967); Grinspoon, L., "Marihuana" in *Scientific American*, Vol. 221, No. 6 (Dec. 1969); and Weil, A., "Cannabis" in *Science Journal* (Sept. 1969); Roden, E., Domino, E., and Porzak, J., "The Marihuana-Induced 'Social High' (Neurological and Electroencephalographic Concomitants)" in *JAMA* Vol. 213, No. 8 (Aug. 4, 1970); Brill, N.,

et al., "The Marihuana Problem" in *Annals of Internal Medicine* 73: 449-50 (1970); Letters to the Editor, "Marihuana Bronchitis" in *JAMA*, Vol. 211, No. 3, p. 501 (Jan. 19, 1970); Washow, I., Olsson, J. and Salzman, C., "Psychological Effects of Tetrahydrocannabinol "in *Arch. Gen. Psychiat.*, Vol. 22: 99-107 (Feb. 1970).

PSYCHOLOGICAL EEFECTS

Cannabis may be introduced into the body in a variety of ways, the avenues limited only by man's physical nature and his creative capacity; but, generally there are three common approaches. It may be eaten, mixed with liquids and drunk, or smoked ("blasting" or "blowing")—the last being the most frequently used method. The hemp plant is most often dryed, cured, and then chopped or pressed into a fine composition that permits the fashioning of hand-rolled cigarettes. The cigarettes often are mixed with tobacco to bind the hemp and facilitate even burning. Frequently the "grass" is diluted with bay leaves, oregano, and other ingredients. Depending upon the fancy of the user, it may be mixed with beer or wine, or made into a candy with honey and sugar. The more enthusiastic users, simultaneously smoke two cigarettes, called a "double header." A Communal cigarette made of ordinary smoking tobacco and cannabis ("chicharra" is popular at many drug oriented social gatherings. Recently, some users have been boiling down the hemp to separate the resin, and from the liquid is extracted a small quantity of powder. The resin, which resembles snuff, is then inhaled.

See Winick, G., "Marihuana Use by Young People" in *Drug Addiction In Youth* (1970).

Authorities agree that for any given drug, at a specific time, utilized by a given person, there is no specific pre-

dictable drug effect. One can only correctly speak about probable physiological and behavioral drug effects. And particularly, a psychoactive drug does different things to different people, and even to the same person, depending upon external and internal circumstances. Among the numerous factors that may modify the specific effects of a drug are: 1) dosage level; 2) route and speed of absorption (i.e., whether ingested, inhaled, or injected); 3) time of administration; 4) temporary state of the organs involved in inactivation and excretion of the drug; 5) tolerance; 6) general physiological differentiations (i.e., water balance, acid base status, body temperature); 7) genetic disposition (i.e., enzyme or blood deficiencies); 8) interaction with other absorbed drugs; 9) age; 10; sex; 11) pathological conditions (i.e., nutritional status and diseases); 12) environmental and psychological factors (such as, setting, personality, knowledge, expectancy, motivation, mood, other competing behavioral systems, etc); and, 13) use technique. As authors Fingl and Woodbury summarily noted:

> "Even when all known sources of variation are controlled or taken into account, drug effects are never identical in all patients or even in a given patient at a given time."

See, Fingl, E., and Woodbury, D., "General Principles" in *The Pharmacological Basis of Therapeutics*, p. 1 (3rd Edition, 1965); Nowlis, H., *Drugs on The College Campus*, pp. 10-12 (1969); Becker, H. "Marihuana: a Sociological Overview" in *The Marihuana Papers* (1968); Blum, R., and Funkhouser-Balbaky, M. "Mind-Altering Drugs and Dangerous Behavior: Dangerous Drugs" in the *Task Force Report: Narcotics and Drug Abuse*, p. 22 (1967).

There is growing evidence that cannabis intoxication has significant negative effects on motor coordination

and complex intellectual functioning. Complex reaction time (largely through sporadic impairment of vigilance), recent memory, recall and comprehension of written information, and accuracy of time estimation are markedly impaired by cannabis influence. In addition, even under the influence of minimum dosage, both the habitue and neophyte, may experience psycho-emotional adverse reactions that are unpleasant, threatening, and ego-dystonic. Symptoms may include anxiety, fear, depression, suspicion, dissociation, depersonalization, disorientation, confusion, paranoid ideation, delusions, and hallucinations.

Dr. Wolfram Keup recently reported on an indepth psychological study of all patients with a history of drug abuse admitted during a 12 month period to Brooklyn State Hospital. He observed that many patients experienced delusions or hallucinations or other psychotic symptoms of short duration during the phase of acute intoxication due to cannabis. In addition, fourteen patients suffered from psychotic behavior of a more serious nature in which cannabis abuse played a distinct role either in precipitating the hospitalization or in the etiology of previous psychiatric imbalance or psychotic episodes. Dr. Keup created a tentative system of classification for the cannabis induced psychopathology as illustrated in Table I. Table II represents the numerical breakdown.

Dr. Keup concluded his report with a dual observation. Although in only approximately three patients per thousand of all hospital admissions was cannabis found to be either the direct or contributing cause of hospitalization, the mere existence of cannabis-provoked psychotic behavior makes this drug dangerous. And, it must be expected that, should synthetic tetrahydrocannabinol become available on the black market, the number of cases of cannabis induced psychopathology will increase.

Dr. Andrew Weil observed in a recent report (Adverse Reactions to Marijuana," *New England Journal of Medicine,* April 1970). three distinct categories of adverse acute reaction to cannabis. The first category involves persons without a history of mental disorder who have never taken hallucinogenic drugs. The former may experience: 1) *Simple depressive reactions.* Generally, in neophyte users (often characterized as obsessive-compulsive) cannabis may precipitate acute depressions resembling transient neurotic depressions unrelated to drug use; 2) *Panic Reactions.* This reaction occurs when people interpret the physical or psychological effects of the drug to mean that they are dying or losing their mind. The panic state may become so severe as to be incapacitating and, on occasion, may stimulate acute psychosis; and, 3) *Toxic Psychosis.* Toxic psychosis or acute brain syndromes occur when there are temporary malfunctions of the cerebral cortex due to the presence of toxins in the body. The reaction is nonspecific and most often occurs after orally ingesting cannabis.

The second category involves persons without a history of mental disorder who have previously taken hallucinogenic drugs. In addition to the aforementioned three reactions, persons who have previously taken hallucinogens may experience two other forms of adverse relations to cannabis: 1) *Recurrence of hallucinogenic symptoatology or "flashbacks."* Cannabis users who complement their drug experience with hallucinogenics occasionally discover that their cannabis experiences change. A common form of this phenomenon is the unsolicited repeat experience of a simple hallucination. For example, an individual who observed the substance of an apple expand and breath when he was under the influence of LSD,

psilocybin or mescaline—may experience the same phenomenon on viewing an apple several days later while under the influence of cannabis. Generally, hallucinogenic flashbacks occur independent of cannabis use, but there has been documentation of the same only when taking cannabis; and, 2) *Precipitation of delayed psychotic reactions.* A small number of individuals who use hallucinogens may suffer psychotic reactions that may not appear until several months after the last use of the drug. These reactions are occasionally unrelated to any previous history of mental illness and are often stubbornly resistant to treatment. In some cases, cannabis intoxication appears to have triggered this effect.

The third category involves persons with a history of psychosis. Dr. Weil observes that in borderline personalities, the effects of cannabis intoxication on secondary perception may constitute stress that pushes these users in the direction of derealization, generally, an experience perceived as frightening. Although cannabis may evoke a true psychotic break in schizophrenic or highly unstable personalities, it is generally believed that the resultant psychosis is characteristic of the personality structure rather than the pharmacological action of the drug.

Reports from other countries regarding cannabis-induced psychosis are numerous. Research authorities in this country often find the former inconclusive because the reports appear to be more descriptive than evaluative. Knowledge of the frequency of psychotic behavior due to cannabis intoxication in the United States is meager but improving. However, contemporarily, the consensus of drug authorities is that the incidence of psychotic behavior resulting from the intake of cannabis is increasing proportionately and will rapidly increase as the more po-

tent forms of natural and synthetic cannabis fill the market.

See, Abdulla, A., "Cannabis indica als Volksseuche in Aegypten," *Schweiz Med. Wschf.*, Vol. 83: 541-43 (1953); Bouquet, R., "Marijuana Intoxication," in *JAMA*, Vol. 124: 1010-11 (1944); Bouquet, R., "Cannabis, Parts III-V," in *Bulletin on Narcotics*, 3, 1:22-43 (1951); Chopra, I, and Chopra, R., "The use of cannabis drugs in India" in *Bulletin on Narcotics*, 9, 1:4-29 (1957); Christozov, C., "L'aspect Marocian de l'intoxication cannabique d'apres des etudes faites dans les conditions d'un hopital phychiatrique de malades chroniques," in *Maroc Med.*, Vol. 44: 630-42 (1965); Peebles, J., "Ganja as a cause of Insanity and crime in Bengal" *Ind. J. Med.*, Vol. 49: 395-96 (1914); Keup, W., "Psychotic symptoms Due to Cannabis Abuse" in *Diseases of the Nervous System* pp. 119-26 (Feb. 1970); Weil, A., "Adverse Reactions to Marihuana" in *The New England Journal of Medicine*, Vol. 282: 997-1000 (April 30, 1970); Bloomquist E., Marijuana: Social Benefit or Social Detriment?" in *Calif. Med.*, Vol. 106: 346-53 (May 1967); Talbott, J., and Teague, J., "Marihuana Psychosis" in *JAMA*, Vol. 210, No. 2 (Oct. 13, 1969); Keeler M., "Adverse Reaction to Marihuana" in *Amer. J. Psychiat.*, Vol. 124:5 (Nov. 1967); Klee, G., "Marijuana Psychosis" in *Psychiat. Quart.*, Vol. 43: 719-33 (Sept. 10, 1970); McGlothlin, W., and West, L., "The Marihuana Problem: An Overview" in *Amer. J. Psychiat.*, Vol. 125: 3 (Sept. 1968); Louria, D., *The Drug Scene*, pp. 95-100 (1970); Weil, A., and Zinberg, N., "Acute Effects of Marihuana on Speech" in *Nature*, Vol. 222, No. 5192, pp. 434-37 (May 3, 1969); Weil, A., "Cannabis" in *Science Journal* (Sept. 1969); Clark, L., Hughes, R., and Nakashima, "Behavorial Effects of Marihuana (Experimental Studies)" in *Arch.*

Gen. Psychiat., Vol. 23, 193-98 (Sept. 1970); Melges, F., Tinklenberg, J., Hollister, L., and Gillespie, H., "Marihuana and Temporal Disintegration" in *Science*, Vol. 168: 1118-20 (April, 1970); Favazza, A., and Domino, E., "Recurrent LSD Experience (Flashbacks) Triggered by Marihuana" in *University of Michigan Medical Center Journal*, pp. 214-16 (Dec. 1969); Frank I., "The Marijuana Problem" in *Annals of Internal Medicine*, Vol. 73: 452-54 (1970); Smith, D., and Mehl, C., "An Analysis of Marijuana Toxicity" in *Clinical Toxicology*, Vol. 3 (1), pp. 101-115 (March, 1970).

Cannabis Dependence

The terms "narcotic," "dangerous drug," "addicts," "users," "addiction" and "habituation" have been used to symbolize such a variety of concepts that, presently, each term appears to have no settled definition. In deference to the aforementioned ambiguity that evolved from attempts to relate multiple drug use to a particular psychological or physical human posture, the World Health Organization attempted a clarification that would cover all kinds of drug abuse. The WHO concluded that the component in common appeared to be dependence, whether psychological or physical or both. And in its thirteenth report, the WHO Expert Committee on Addiction-Producing Drugs (1964) recommended substituting the term "drug dependence" for both the terms drug addiction and habituation. This recommendation was endorsed by the WHO Scientific Group on Evaluation of Dependence-Producing Drugs (1964) and supported by the committee on Drug Addiction and Narcotics of the National Academy of Sciences—National Research Council (twenty-sixth meeting, Washington, D.C., 1964). The use of the term "drug dependence"

must be modified by a phrase linking it to a particular type of drug in order to differentiate the characteristics associated with one class of drugs from another.

Drug dependance is defined as a state of psychic or physical dependance (or both) on a drug following administration of that drug on a periodic or continuous basis. The characteristics of such a state vary with the agent involved, the characteristics being circumscribed by clearly designating the particular type of drug dependence in each specific case; i.e., drug dependance of the opiate type, of amphetamine type, etc. The specification of the type of dependance is essential for clarity and should form an integral part of the terminology, since it becomes illogical to define the term drug dependence independently of the agent involved.

Drug dependence of the cannabis type is a state evolving from chronic or periodic administration of natural or synthetic cannabis substances. Not all authorities agree on its characteristics. Many authorities believe that there is no evidence of tolerance with chronic cannabis use. However, a growing majority of research scientists believe that users may develop a "reverse tolerance"—which requires smaller and smaller doses to produce the desired effects of a "high." In opposition, a few authorities, mostly foreign, conclude that repetitive use of cannabis does induce a tolerance which leads to increased dosages. Smith and Mehl suggest that the degree of cannabis tolerance is best described as a "J-shaped function": i.e., the novice has a moderate degree of tolerance; with increasing exposure to cannabis, tolerance decreases to the point that the occasional user has a low degree of tolerance; with increasingly heavy use, tolerance increases again so that a very heavy user has a high degree of tol-

erance. Smith and Mehl believe that the initial negative tolerance is a learned phenomenon, but that the later increased tolerance may be pharmacologic in origin.

Again, relative to physiological dependence there are contradictory statements. Most authorities in the United States agree that no physical dependance develops with the continued use of cannabis, so there is no characteristic abstinence syndrome when the drug is discontinued. Others disagree, and equate cannabis dependance with that of the opiates.

Most authorities do agree, however, that there may occur a moderate to strong psychic dependance with the habitual use of marijuana. Many writers point to the personality structure of the user rather than the chemical or pharmacological action of the drug, itself, for the genesis of this phenomenon.

Dr. Jordan Scher, noted existential psychiatrist and Director of The National Council On Drug Abuse, recently observed that, within the last several years, an increasing number of his private patients have come to him for relief of a "marijuana habit." Generally, the patients were between the ages of 20 and 30 years old who were essentially functioning members of society but who were beginning to experience a vague sense of reduced work efficiency. Among the symptoms were: (1) occasional bitemporal headaches of variable intensity, often crescendo in type; (2) a generalized sense of uneasiness, discomfort, reduced creativity, and a progressive sense of purposelessness; (3) ill-defined feelings of physical disturbance, weakness or hypochondriacal somatic complaints, and varying degrees of insomnia; (4) disinterest in sex; (5) some memory and judgment impairment, and, (6) loss of total human energy and frequent manifestation to half-efforts at

work and at home. And interestingly enough, although the patients suffering from the above symptomatology professed a decreasing interest in the use of marijuana, they seemed completely unable or unwilling to break with its use voluntarily. In addition, the "marihuanic" apparently developed diminished pleasure from the drug's influence, requiring more, a stronger amount, or a different variety to produce the accustomed "high"—all signs of increased tolerance. And, when subjects were able to discontinue use of the drug, they experienced frequent, intense, long-lasting headaches, and often developed nebulous pains and aches in the chest, upper part of the abdomen, and lower part of the back. Dr. Scher believes that the aforementioned phenomenon is different from an amotivational syndrome and appears more like the classical pharmacologically induced abstinence syndrome. Scher, J., "The Marihuana Habit" in JAMA, Vol. 214, No. 6 (Nov. 9, 1970).

See, Eddy, N. Halbach, H. Isbell, H., and Seiners, M., "Drug Dependence: Its Significance and Characteristics" in *Bull. Wld. Hlth. Org.*, Vol. 32: 721-33 (1965); Haislip, G., "Current Issues In The Prevention and Control of Marihuana Abuse." A paper presented to The First National Conference On Student Drug Involvement sponsored by The United States National Student Association at the University of Maryland, August 16, 1967; Tauro, J., "Marihuana and Other Relevant Problems" in *American Criminal Law Quarterly*, Vol. 7, No. 3, pp. 174-94 (Spring 1969); Report No. 124 of the Department of Health and Social Security, *Amphetamines, Barbiturates, LSD and Cannabis*, p. 44, (Her Majesty's Stationary Office, London, (1970); Report by the Advisory Committee on Drug Dependence, *Cannabis*, (Her Majesty's Stationary Office, Lon-

don (1968); Nowlis, H., *Drugs On The College Campus*, pp. 92-101 (1969); Jaffe, J., "Drug Addiction" in *The Pharmacological Basis of Therapeutics*, Ch. 16 (Fourth Edition); McGlothlin, W., and West, L., "The Marihuana Problem: An Overview" in *Amer. J. Psychiat.*, 125: 3:370-78 (Sept. 1968). Bouquet, J., "Marihuana Intoxication" in *JAMA*, Vol. 124; 1010 (1944); Bouquet, J. "Cannabis" in *Bull. Narcot.*, 3: 1: 22 (1955); Frazer, J., "Withdrawal Symptoms in Cannabis Indica Addicts" in *Lancet*, 11: 747 (1949); Smith D., and Mehl, C., "An Analysis of Marihuana Toxicity" in *Clinical Toxicology*, Vol. 3 (1), pp. 101-115 (March, 1970); Brill, N., Marijuana Problem in *Psychiatry Digest*, Vol. 30: 9-19 (1969); Scher, J., "The Marihuana Habit" in *JAMA*, Vol. 214, No. 6 (Nov. 9, 1970).

PROGRESSION FROM CANNABIS TO OTHER DRUGS

Three hypotheses with corresponding proponents dominate this context. One postulates that there is no casual relationship between the use af cannabis and any subsequent drug use. In opposition to the former, another articulates that there is a causal relationship between the use of cannabis and subsequent drug use that occurs in a natural progression—the etiology assumed to be psychosociological rather than physiological. The third hypothesis suggests that the use of cannabis is merely one predisposing factor which in combination with other related variables may statistically increase the likelihood of multiple drug use for a given individual. The latter postulate may be characterized as the Drug Subculture Theory or as an example of differential association or drug readiness.

Traditionally, many writers, concerning themselves with drug use, believed that the use of cannabis was a "stepping stone" to heroin dependency. Presently, this position is not popular with most authorities but is not without arguable support.

John Ball and associates studied 2,213 opiate dependent patients admitted to the Lexington and Fort Worth Hospitals during 1965. The sample was relatively heterogenous—including both voluntary admissions and federal inmates, males and females, Negroes and whites, white collar employees and laborers, housewives, prostitutes, physicians, attorneys, as well as drug sellers and users. Forty-six of the fifty states were represented and the range in age went from 16 to 75 years. The principal source of data included: (1) hospital admission summary sheets; (2) medical records; (3) police records; and, (4) extended interviews. Each subject was specifically asked (1) whether he had ever used "marijuana," (2) at what age he was first arrested, (3) at what age he first used opiates, (4) present drug use, (5) method of administration, and (6) from whom the drugs were obtained. The study focused upon an analysis of these six items against the background of the other general information. Dr. Ball and his associates made the following analysis.

Three types of conditions were found to exist relative to cannabis and opiate use in the United States, at least preceding 1965. First, there was a positive association between "marijuana" and opiate use in 16 states, (New York, Massachusetts, Connecticut, New Jersey, Maryland, Pennsylvania, Ohio, Michigan, Indiana, Illinois, Missouri, Louisiana, Texas, New Mexico, Arizona, and California) the District of Columbia, and Puerto Rico. In each of these high "addiction" states, more than 50 percent of

the subjects used cannabis as well as opiates. The "marijuana states" consisted of two contiguous sets. Five of the cannabis states bordered on Mexico or the Gulf of Mexico with the other eleven states located in the Eastern-Midwestern metropolitan belt. A second type of association was found in twelve states, (West Virginia, Virginia, Kentucky, North Carolina, South Carolina, Tennessee, Georgia, Alabama, Mississippi, Florida, Arkansas, and Oklahoma), wherein most of the opiate dependents had never used cannabis. The "opiate only states" were Southern and constituted a regionally based area from Miami to Oklahoma to Virginia. The subjects from this section, generally, were using opiates other than heroin and were not associated with cannabis use. The third condition revealed 22 low "addiction" states, (Wisconsin, Minnesota, Iowa, North Dakota, South Dakota, Nebraska, Kansas, Montana, Wyoming, Colorado, Washington, Idaho, Oregon, Nevada, Utah, Maine, Vermont, New Hampshire, Delaware, Rhode Island, Alaska, and Hawaii), with or without the use of cannabis. Preceding 1965, there were, then, two quite distinct patterns of opiate use in the United States. The first pattern of opiate dependency was associated with cannabis use and was concentrated in the densely populated and highly industrial metropolitan states—New York, Illinois, California, and Texas. The second pattern of opiate use occurred in the Southern states and was not associated with the use of "marijuana."

In attempting to answer why "marijuana" use was closely associated with one pattern of opiate dependency but not another, Dr. Ball concluded: (1) within the general drug-dependent population, one discovers particular drug specific behavioral patterns which appear to insulate

the user from other types of drug abuse; (2) drug dependency in the form of social deviance appears to be the accumulative result of the interaction of numerous variables including ethnicity, host enviroment, and cultural changes; (3) the use of cannabis is considered a predisposing influence in the etiology of opiate addiction in the United States; (4) among the metropolitan residents of the high "addiction" eastern and western states, opiate use is commonly preceded by the use of cannabis and arrest; (5) geographically, certain incipient "addicts" are predisposed to opiate dependency by their previous use of cannabis for the following reasons, (1) both cannabis and opiates are ingested for their euphoric effects, (2) both cannabis and heroin are generally received from "underworld" sources of supply, (3) both drugs are initially received and used within a peer-group recreational setting, (4) both are illegal, and, (5) the neighborhood friends with whom cannabis use begins are often those who initiate the incipient drug dependent to the use of opiates (the principal effect being one of differential association, i.e., becoming a part of a drug-using subculture).

The study of Ball and his associates was complemented by a study by Robins and Murphy during 1967. The report by Robins and Murphy describes from a sociological prespective the representative drug use in a normal population of young Negro men, as ascertained by interviews and record research of 235 subjects. The subjects chosen were males, born in St. Louis between 1930 and 1934, attending a Negro St. Louis public elementary school for six years or more, having an IQ of at least 85 while in elementary school, and having a guardian's name and occupation appearing on the school record. From the total population of elibigle males (numbering 930), initially, 240 names were selected for the follow-up. The sample

was designed to provide an equal number of men for each of eight selected categories created by taking all permutations of three dichotomized variables: (1) father's presence or absence; (2) guardian's occupation at the highest status level versus the lowest, and, (3) significant disciplinary or academic school problems versus minimal problems or none. Other selected variables were then matched across the eight categories.

After extensive record research and lengthy interviews, Robins and Murphy formalized their analysis categorically that lends itself to the following summary.

Prevalence of Drug Use.

One hundred and nine respondents (49 percent of the interviewed sample) reported having tried at least one of the four types of drugs inquired about in the interviews (i.e., cannabis, heroin, amphetamines, and barbiturates). Of the former, nearly all, or 103, had tried cannabis.

Twenty-eight (13 percent) reported having tried heroin. Ten percent were or had been heroin dependents. Everyone reported using heroin more than six times became an opiate dependent.

Thirty-seven men (17 percent) admitted trying amphetamines with 8 percent becoming regular users. Five men who admitted to being amphetamine dependents were also "addicted" to heroin.

The use of barbiturates was common among 32 subjects (14 percent) but only 7 men reported using the drugs as regularly as once a week and none reported any barbiturate dependency.

Patterns of Drug Use.

(a) Types—among the studied population, the typical drug user had a history of multiple drug use, with the exception that half of the cannabis users reported no other drug use. Among users of heroin,

amphetamines, and barbituates, only 4, 5, and 6 percent, respectively, had not used another drug. Approximately two-thirds of amphetamine and barbituate users had used three or four other types of drugs. Eighty-two percent of those who tried heroin used three or four other drugs. Two-thirds of heroin users used amphetamines and more than half used barbituates. Conversely, half of the amphetamine and barbituate users had taken heroin as well.

(b) Order of Use—The use of cannabis initiated three out of four beginning heroin dependents into the multiple drug syndrome. Only seven percent of the heroin habitues subsequently acquired the use of cannabis. There appeared little apparent pattern to the encounter of heroin users with barbiturates, either relative to frequency or sequence. However, analysis revealed that heroin users generally began amphetamines only after they had used heroin.

(c) Age at First Use—Analysis revealed that twenty-five percent of the subjects who ever used cannabis did so before the age of 16, and nearly seventy percent before the age of 20. Only nine percent were 24 or older at first use. The age range for the introduction to heroin was relatively limited. More than three-fourths of heroin dependents were between the ages of 16 and 23 when initiated. Half of the heroin users began before age 20, but only eleven percent started using the drug before the ages of 16 or after 24. Amphetamines were tried later, and barbituates earlier, than heroin. Although the age of initiation varied for each drug, whenever a specific drug use began, generally, it began with cannabis. Among young males beginning drug use before 16, ninety-five percent used cannabis during their first year. Teenage males beginning drugs between the ages of 16 and 19 used cannabis during the first year in eighty-five percent of the cases. Every male starting multiple drug use between 20 and 23 used cannabis as the drug of initiation the first year. Only for males

beginning drug use after the age of 23 did a significant number (39 percent) not use cannabis during the first year. For the group tested, then, cannabis was typically the drug of initiation into the larger world of multiple drug use, whatever the age of original use.

Within this context and in complement to the former analysis the report went on to make an additional interesting observation. Although cannabis initiated those of all ages into the world of multiple drug use, the most statistically significant predictor of the seriousness of use involvement with drugs was the age at initiation. The earlier drug use began, the greater was the risk of evolving to heroin and/or amphetamines, greater was the variety of drugs eventually used, and greater was the risk of a specific drug dependency or regular use.

Social and Psychology Predisposing Factors.

While socioeconomic status of the family and elementary school performance of the subjects did not prove predicative of drug use, generally, the analysis did reveal that dropping out of high school predicated experimentation with drugs, and that delinquency and absent fathers predicated going from cannabis use to use of heroin and subsequent heroin dependency. The combination of the absent father or father figure, juvenile delinquency, and dropping out of high school characterized those youths most vulnerable to heroin "addiction."

During the fall of 1967, another survey was conducted pursuant to the direction and control of Shick, Smith, and Meyers in the now famous Haight-Ashbury Community of California,indicating a different pattern of drug use. Members of the staff of the Haight-Ashbury Medical Clinic administered a questionnaire to those who came to the clinic, and from other congregation areas within the Haight-Ashbury neighborhood that included multiple

choice questions providing demographic and personal data, employment history past incidence of phychiatric counseling and/or hospitalization, drug preferences, and questions detailing the respondent's own use of cannabis, hard liquor, beer and wine, other sedative hypnotic drugs, oral and intravenous amphetamines, psychedelic drugs, heroin, cocaine, and opium. A total of 413 questionnaires were analyzed—answered by the same number of respondents (222 males and 191 females) who were primarily sons and daughters of the white middle class, had acquired some college education, and who frequently experimented with various drugs. The population profile was as follows: 51.6 percent of the respondents' fathers had either professional, managerial, or sales occupations; 41.3 percent of the fathers had some college education; 79.9 percent of the respondents identified themselves as single; 10.7 percent as married; 86.2 percent were Caucasian; less than 1 percent of the sample were Negro; 3.9 percent were listed as American Indian; the mean age of the respondents was 20.5 +/—1.5 years; 51.8 percent of the sample had some college education; 43 percent had not lived with any parent for three years or more; more than 50 percent were from states other than California; and, 41.4 percent had lived most of their lives in cities of less than 200,000 people or in rural areas. The research focused and reported on the patterns of cannabis use and its relationship to the abuse of other drugs.

Four patterns of drug use were prevalent in the sample: the experimental, social, ritual, and compulsive use. The experimental or episodic user of drugs used drugs infrequently, although the experimentation involved a variety of drugs. The social pattern involved the periodic use of drugs in a social setting, where the acquisition of a

state of intoxication was of secondary importance to the facilitation of social interaction and the alleviation of a specific anxiety by the drug. The ritual pattern consisted of a specific drug use to achieve previously defined goals, often of a philosophic or psychotherapeutic type. The compulsive user tended to continue the use of a specific drug notwithstanding the deterioration of his physical and psychological functionings due to its use, and to increase the dosage, regardless of pharamacologic tolerance.

The use of cannabis was nearly universal in the sub-culture; 94.6 percent of the males and 98.4 percent of the females having used the drug. Eighty-seven percent of the total admitted the use of LSD or a similar hallucinogenic drug. Eighty-seven percent had tried hard liquor, with 55 percent having used other drugs of the sedative-hypnotic type. One-fourth of the subjects had tried heroin, although only eight percent were assumed to be abusing that drug. Fifty-eight percent admitted the use of opium (or what was represented to be opium); 36 percent admitted to some personal experience with cocaine; 75 percent had tried an oral amphetamine; with 35 percent admitting the use of intravenous amphetamine.

In addition to the above, the report observed the following. First, during 1965-1967, cannabis was used increasingly by younger persons. Second, the cannabis circulating in the United States during this period reflected a low abuse potential. Third, within the studied community, cannabis was being used as a hard alcohol substitute (no cause and effect relationship suggested). Fourth a drug abuser was likely to be a multiple drug abuser (either horizontally or vertically). Fifth, the use of LSD and cannabis were practically inseparable. Not only was there a substantial association between the use of psyche-

delics and cannabis, generally, but the habitual use of "marijuana" was significantly more associated with the abuse of psychedelics than with the abuse of any other drug. Sixth, the significantly younger age that drug abusers tried cannabis merely reflects early conditions that predispose one to abuse drugs, not a casual relationship. Seventh, the subjects revealed a substantial preference for psychedelics; 46.8 percent listed LSD as their first choice with 25.5 percent listing cannabis first. Eighth, during the investigation, the sale of drugs within the Haight-Ashbury community was characterized by a highly commercial approach. Drugs were sold under constantly changing guises, fantastic claims about experiential potential were made about each drug, and many a user had a preconception about the expected effect of a particular drug sold to him even before he had experienced it. Many drugs were sold as one type when in fact they were another.

Within the last several years, the patterns of drug use in the Haight-Ashbury district in San Francisco have changed dramatically, with a shift from LSD and marijuana as the drugs of choice to the compulsive intravenous use of amphetamine in high dosage. Since the early fall of 1967, as the community of "speed freaks" slowly emerged, the individuals experimenting with the moderate use of marijuana and LSD left the Haight-Ashbury area —the two diverse groups apparently in philosophical conflict. The increased incidence of both oral and intravenous use of amphetamine (an "upper" has occasioned a related increase in the use of "downers" in the form of barbiturates and heroin, both orally and intravenously. Presently, the "community" in Haight-Ashbury may be characterized by its distinct compulsive use of a variety of drugs possessing high abuse potential.

In deference to the increasing research in this context, the above reports being representative, it is inaccurate to singularly speak of "the" drug culture. Although patterns of drug use and related life styles are changing in the United States, presently, there are several different drug subcultures apparent: (1) the ghetto heroin culture; and, (2) several middle class white subcultures, including (a) campus drug subculture, (b) professional-white collar drug subculture, and (c) the hippie drug subcultre. Although each has its own specific pattern of drug use and related life styles, there are observable similarities in each: particularly, a positive correlation between the use of one and all other drugs i.e., an individual who uses one drug will more likely use another. And, within all the drug subcultures, several studies reveal specifically that cannabis use highly correlates with the use of nearly all other drugs. In addition, the use of cannabis typically preceded the use of nearly all other illegal drugs. Most authorities are in agreement up to this juncture, substantial disagreement occurs, however, in attempting to resolve whether or not causation best explains the close association between cannabis use and subsequent personal experience with dangerous drugs and opiates. Within this context, one may summarize by observing that although the sequential theory of drug abuse is not popularly held it is not without arguable support. The hypothesis that is most popularly accepted suggests that a specific drug abuse pattern evolves from the accumulative effect of three basic factors: the pharmacological effect of the drugs, the genetical and psychological structure of the individual, and the pressures of the host enviroment. As previously noted, within the latter hypothesis, the use of cannabis is seen as a predisposing fac-

tor among many that statistically increases the likelihood of multiple drug use and abuse for a given individual. As with most areas involving "marijuana" research and conjecture, the hypotheses await confirmation by testing and longitudinal research analysis.

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CANNABIS USE AND ANTI-SOCIAL ACTIVITY

Published statements by law enforcement officials and drug authorities regarding the association between crime and cannabis use are contradictory; and, within the drug context, generally, merely reflect the frequent antipodean interpretations that result from the attempts of men circumscribed by different biological and psycho-sociological sets to establish from relatively limited evidence whether a causal nexus exists between two factors.

Historically, both in the United States and other countries, the most prominent argument supporting the prohibition of cannabis use has been that the user is induced into criminal behavior. In the United States, as early as 1926, a New Orleans newspaper, the *New Orleans Item*, ran a series of articles dealing with "marijuana" use, in-

cluding various reports of heinous crimes committed by insanely-crazed cannabis users. During the 1930's, many state legislators and the then Federal Bureau of Narcotics relied heavily upon this argument in securing antimarijuana legislation. The argument is not without its supporters today.

The proponents of the hypothesis that cannabis use is casually related to criminal behavior, especially violent crimes, base this proposition upon (1) case histories accumulated by law enforcement agencies and medical personnel; (2) reports by C. G. Gardikas (former head of Greek Criminal Services—1950), P.O. Wolff (Latin America—1949), J. Bouquet (Tunis—1951), T. Asuni (Nigeria—1964), T. A. Lamba (West Africa—1965), and V.H. Vogel (United States, 1967), (3) the views of police officers and officials; and, (4) occasionally in deference to the assumed etymology of the word "assassin."

Recently, most writers concerning themselves with cannibas use feel there is no objective evidence to support a conclusion that there is a causal relationship between the use of the drug and major crime; excluding the activities for the possession and sale of the same, though most authorities do not dispute the frequent concomitance of cannabis and criminal behavior. Within the last several years, the consensus among academicians studying the drug phenomenon suggests that the drug-crime relationship depends upon the nature of the individual who chooses to use drugs, the type of life styles one meets as a user, and upon the life circumstances influencing the user both before drug use and those occuring subsequently by virtue of the individuals's own response and society's response to him concerning his specific drug behavior.

Relative to the issue of cannabis occasioned violence, the hypotheses are acutely dichotomous but arguably congruous. The first hypothesis suggests that cannabis use, even with minimal dosages of the low potency kind, may precipitate extremely violent behavior for a given subject. Doctor Wolfram Keup, writing in the February, 1970 issue of *Diseases of the Nervous System*, observed that, today although violence under cannabis influence is believed rare, these are cases that reveal "that the old tale of the 'hashashins' turning 'assassins' is not altogether without foundation"—citing the case study of:

> "A 32 year old farmer's son of primitive mentality; periodic alcoholic since age 15. A sister once hospitalized for epilepsy. The patient stuttering slightly since childhood. Six months prior to admission he expressed paranoid ideas. Diagnosis at admission: Schizophrenia, Paranoid. No drug use except marijuana, on 4 occasions only, with uniform results: Pot makes me feel big and strong. I think I am really dangerous then. I feel handsome; all women have their eyes on me. My legs and forearms feel strong like steel, so I promptly get into fights ending up in the hospital. I am afraid I will kill somebody one day, so I stopped. Alcohol makes me rather docile."

Doctor Gerald Klee, in *Psychiatric Quarterly* (Sept. 10, 1970) concluded that (1) the nature of the psychological reaction to cannabis is influenced by the personality of the user, including, both psychodynamics and character structure, (2) even a minimal dose of cannabis may precipitate a psychosis with violent manifestations in a predisposed individual, (3) previous use of cannabis without any harmful effects is no guarantee that the latter will not occur with subsequent use, and (4) those who experience pathological reaction to one centrally active drug have an increased risk of similar reactions with the use

of other centrally active drugs. Dr. Klee found the following case study of a relatively physically and psychologically healthy person particularly unique in that there was an unmistakable causal relationship between the use of cannabis and a subsequent acute psychiatric disturbance.

Mr. P.B. was a 26-year-old, single, white, male of Italian birth. He was a college graduate, army veteran, and a junior executive in a large business concern at the time he experienced his acute marijuana psychosis. Prior to his extremely adverse reaction to marijuana intoxication, he had no experience with "recreational" drugs other than alcohol and cannabis. Mr. P. B's account to Dr. Klee of his untoward marijuana experience may be summarized as follows.

On a particular Sunday afternoon, P.B. and his girl friend each smoked one hardrolled marijuana cigarette. Rather immediately, the subject felt himself getting unusually "high" and the sensation soon became quite uncomfortable, much as though he were suffering from claustrophobia. Soon he was experiencing a multitude of frightening illusions, delusions, and hallucinations. Initially, he felt that he had died and was entombed in Hell. Subsequently, he experienced a wide spectrum of congnitive imagery that included thinking or visualizing (1) that he killed his girl friend; (2) that time was going backwards; (3) that he was confined in Purgatory and been assigned various Herculean-like tasks; (4) that he had been placed in a trash can in a brown paper bag; and, (5) that he had been transformed into the body of a cat, a friend, his brother, and a baby. Eventually, P. B. became extremely violent and physically uncontrollable—even attempted to strangle his girl friend.

Approximately six hours after the beginning of the psychotic episode, the subject started acting and thinking rationally. The total experience was characterized as horrendous.

The second hypothesis postulates that cannabis use inhibits rather than increases violent behavior in humans. Support for the proposition is found in the reports of S. Garattini (United States 1965) S. Schachter, Hollister, Richards, and Gillespie (United States 1968); (2) recent laboratory experimentation with mice; and (3) the voluminous report of the Indian Hemp Drugs Commission of 1893-94. However, as noted, previously, the last two hypotheses need not be incongruous, since substantial evidence indicates that not only may various individuals react differently to similar cannabis intake but a single subject may experience diametric reactions to cannabis use on separate occasions. See Gardikas, C., "Hashish and Crime" in *Enkephalos,* Vol. 2-3 (1950); Wolff, P. *Marijuana in Latin Aemirica The Threat It Constitutes* (1949); Bouquet, J., "Cannabis" in *United Nations Bulletin on Narcotics,* Vol. 3, No. 1, pp. 22-45 (Jan. 1951); Asuni, T., "Socio-Psychiatric Problems of Cannabis in Nigeria" in *United Nations Bulletin on Narcotics,* Vol. XVI, No. 2, p. 17 (June 1964); Lambo, T., "Medical and Social Problems of Drug Addiction in West Africa" in *United Nations Bulletin on Narcotics,* Vol. XVII, No. 1, p. 3 (Jan.-March 1965); *Report of the Indian Hemp Drugs Commission* 1893-94 reprinted 1969); Garattini, S., "Effects of a Cannabis Extract on Gross Behavior," in *Hashish: Its Chemistry and Pharmacology,* pp. 75-77 (Wolstenholme and Knights, eds. 1965); Schachter, S. "The Interaction of Cognitive and Physiological Determinants of Emotional State" in *Advances in Experimen-*

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No. 71-881

In the Supreme Court of the United States

OCTOBER TERM, 1971

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

HOWARD C. HUDSON,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

MEMORANDUM FOR HOWARD C. HUDSON, RESPONDENT IN OPPOSITION

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In the
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-831

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

HOWARD C. HUDSON,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MEMORANDUM FOR HOWARD C. HUDSON, RESPONDENT IN OPPOSITION.

The petition filed herein by the State of Illinois should not be granted because of a lack of federal jurisdiction. The Supreme Court of Illinois grounded its decision on its

interpretation of the Constitution of the State of Illinois, to wit: Article IV, Section 22 of the Constitution of 1870, even though it relied also on the equal protection clause of the United States Constitution.

> "In such circumstances, even though a state court's opinion relies on similar provisions in both the State and Federal Constitutions, the state constitutional provision has been held to provide independent and adequate ground of decision depriving this Court of jurisdiction to review the state judgment." *Jankovich v. Indiana Toll Road Comm.*, 379 U.S. 487, 491-2 (1965).

In *Fox Film Corp.* v. *Muller*, 396 U.S. 207 (1935) involving a similar question, a like result was reached:

> ". . . the case is controlled by the settled law that where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, our jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment."

The Illinois opinion is clear. It invalidated a conviction grounded on the improper classification of marijuana as a narcotic. The Illinois court stated, (Petn. A. 27):

> Against the entire background of the drugs considered we judge that the classification of marijuana under the Narcotics Drug Act rather than under the Drug Abuse Control Act has been arbitrary. A comparison of the drugs leads to a conclusion that marijuana more closely resembles drugs placed in the Drug Abuse Control Act. It is, comparatively speaking, dissimilar from drugs under the Narcotic Drugs Act. We do not find a rational basis for the classification, a consequence of which is that one first convicted of the sale of marijuana must without qualification receive a sentence ten times greater than one permitted to be imposed on one convicted for the first time of a

> sale of drugs under the Drug Abuse Act. The absence of a rational basis for distinguishing first convictions for sales of marijuana from first convictions for sales of drugs placed in the Drug Abuse Control Act compels the conclusion that the present classification of marijuana . . . was in violation of section 22 of article IV of the former constitution of this State.

Thus, it is clear, in simple and unequivocal language—that one of the basis for the decision was grounded on the Illinois legislature's unreasonable classification of marijuana as a narcotic in violation of the Illinois constitution.

The concept is not new in Illinois. Section 22 of Arteile IV of the Illinois Constitution has heretofore been interpreted by the Illinois court in *People* v. *Dale*, 406 Ill. 238, 92 N.E.2d 761 (1950). The court stated, (92 N.E.2d 765):

> "There is no doubt but that an unreasonable classification would contravene section 22 of article IV of the Illinois constitution."

The Illinois court ruled in 1934 that Section 22 of Article IV of the Illinois Constitution supplemented the equal protection provision of the 14th Amendment prohibiting statutory enactments of arbitrary classification. *Michigan Millers' Mutual Fire Insurance Co.* v. *McDonough*, 358 Ill. 575, 193 N.E. 662 at 666.

It is obvious, from the presentation of the State's petition, that they are seeking a review of *People* v. *McCabe* (Petn. App. C), and not merely a review of the reversal in *People* v. *Hudson*, because *Hudson* was reversed solely and only upon the holding in *McCabe*. (Petn., App. A).

The State's petition should be denied because it is asking this court to interfere with the State's interpretation

of its own laws and constitution which the "adequate state ground" doctrine was designed to prevent.

It is therefore respectfully submitted the petition for writ of certiorari should be denied.

Respectfully submitted,

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